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THIS SUPPLEMENT CONTAINS

Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2015 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through April 3, 2015. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through April 3, 2015.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
Emory Law Journal.
Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
John Marshall Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice.
American Jurisprudence, Proof of Facts.
American Jurisprudence, Trials.
Corpus Juris Secundum.
Uniform Laws Annotated.
American Law Reports, First through Sixth Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2015 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2015 supplement pamphlets and in the bound volumes of the Code.

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TITLE 48

REVENUE AND TAXATION

VOLUME 36

Chap.

VOLUME 37

CHAPTER 1

GENERAL PROVISIONS

Sec.

48-1-1. Short title.

JUDICIAL DECISIONS

Cited in City of Atlanta v. City of College Park, 292 Ga. 741, 741 S.E.2d 147 (2013).

48-1-2. Definitions.

As used in this title, the term:

(1) "Agency" means any department, commission, institution, office, or officer of this state.

(2) "Aircraft" means any contrivance used or designed for navigation or flight through the air.

(3) "Airline company" means any person who undertakes, directly or indirectly, to engage in the scheduled transportation by aircraft of persons or property for hire in intrastate, interstate, or international transportation.

(4) "Commissioner" means the state revenue commissioner.

(5) "Contraband article" means:

(A) Any unauthorized, false, forged, altered, or counterfeit revenue stamp or marking, prima facie evidencing the payment of any tax imposed by the revenue laws of this state;

(B) Any article, plate, die, stamp, machine, apparatus, paraphernalia, or other device or material designed for use, intended to be used, or used in the making of any unauthorized, false, forged, altered, or counterfeit revenue stamp or marking described in subparagraph (A) of this paragraph; or

(C) Any article or property to which any unauthorized, false, forged, altered, or counterfeit revenue stamp or marking prima facie evidencing the payment of any tax imposed by the revenue laws of this state is attached or affixed.

(6) "Department" means the Department of Revenue.

(7) "Deputy commissioner" means the deputy revenue commissioner.

(8) "Domestic," when applied to any corporation or association (including, but not limited to, a partnership), means created, organized, or domiciled in this state.

(9) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person.

(10) Reserved.

(11) "Foreign," when applied to any corporation or association (including, but not limited to, a partnership), means created or organized outside this state.

(12) "Individual" means a natural person.

(13) "Intangible personal property" means the capital stock of all corporations; money, notes, bonds, accounts, or other credits, secured or unsecured; patent rights, copyrights, franchises, and any other classes and kinds of property defined by law as intangible personal property.

(14) "Internal Revenue Code" or "Internal Revenue Code of 1986" means for taxable years beginning on or after January 1, 2014, the provisions of the United States Internal Revenue Code of 1986, as amended, provided for in federal law enacted on or before January 1, 2015, except that Section 85(c), Section 108(i), Section 163(e)(5)(F), Section 164(a)(6), Section 164(b)(6), Section 168(b)(3)(I), Section 168(e)(3)(B)(vii), Section 168(e)(3)(E)(ix), Section 168(e)(8), Section 168(k) (but not excepting Section 168(k)(2)(A)(i), Section 168(k)(2)(D)(i), and Section 168(k)(2)(E), Section 168(m), Section 168(n), Section 172(b)(1) (H), Section 172(b)(1)(J), Section 172(j), Section 179(f), Section 199, Section 810(b)(4), Section 1400L, Section 1400N(d)(1), Section 1400N(f), Section 1400N(j), Section 1400N(k), and Section 1400N(o) of the Internal Revenue Code of 1986, as amended, shall be treated as if they were not in effect, and except that Section 168(e)(7), Section 172(b)(1)(F), Section 172(i)(1), and Section 1221 of the Internal Revenue Code of 1986, as amended, shall be treated as they were in effect before the 2008 enactment of federal Public Law 110-343, and except that Section 163(i)(1) of the Internal Revenue Code of 1986, as amended, shall be treated as it was in effect before the 2009 enactment of federal Public Law 111-5, and except that Section 13(e)(4) of 2009 federal Public Law 111-92 shall be treated as if it was not in effect, and except that the limitations provided in Section 179(b)(1) shall be $250,000.00 for tax years beginning in 2010, shall be $250,000.00 for tax years beginning in 2011, shall be $250,000.00 for tax years beginning in 2012, shall be $250,000.00 for tax years beginning in 2013, and shall be $500,000.00 for tax years beginning in 2014, and except that the limitations provided in Section 179(b)(2) shall be $800,000.00 for tax years beginning in 2010, shall be $800,000.00 for tax years beginning in 2011, shall be $800,000.00 for tax years beginning in 2012, shall be $800,000.00 for tax years beginning in 2013, and shall be $2 million for tax years beginning in 2014, and provided that Section 1106 of federal Public Law 112-95 as amended by federal Public Law 113-243 shall be treated as if it is in effect, except the phrase "Code Section

48-2-35 (or, if later, November 15, 2015)" shall be substituted for the phrase "section 6511(a) of such Code (or, if later, April 15, 2015)," and notwithstanding any other provision in this title, no interest shall be refunded with respect to any claim for refund filed pursuant to Section 1106 of federal Public Law 112-95. In the event a reference is made in this title to the Internal Revenue Code or the Internal Revenue Code of 1954 as it existed on a specific date prior to January 1, 2015, the term means the provisions of the Internal Revenue Code or the Internal Revenue Code of 1954 as it existed on the prior date. Unless otherwise provided in this title, any term used in this title shall have the same meaning as when used in a comparable provision or context in the Internal Revenue Code of 1986, as amended. For taxable years beginning on or after January 1, 2014, provisions of the Internal Revenue Code of 1986, as amended, which were as of January 1, 2015, enacted into law but not yet effective shall become effective for purposes of Georgia taxation on the same dates upon which they become effective for federal tax purposes.

(14.1) "Internal Revenue Code" or "Internal Revenue Code of 1986" means for taxable years beginning after December 31, 2005, but before January 1, 2007, the provisions of the United States Internal Revenue Code of 1986, as amended, provided for in federal law enacted on or before January 1, 2006, except that Section 168(k) (but not excepting Section 168(k)(2)(A)(i), Section 168(k)(2)(D)(i), and Section 168(k)(2)(E)), Section 199, Section 1400L, Section 1400N(d)(1), Section 1400N(j), and Section 1400N(k) of the Internal Revenue Code of 1986, as amended, shall be treated as if they were not in effect, and except that the following provisions shall be as amended by the federal Tax Relief and Health Care Act of 2006 (Pub. L. No. 109-432) as such federal act existed on December 20, 2006, and effective for purposes of Georgia taxation on the same dates upon which they became effective for federal tax purposes pursuant to said federal act: Sections 38, 41, 45A, 45N, 51, 51A, 61, 62, 106, 121, 143, 164, 168 (except 168(k) but not excepting 168(k)(2)(A)(i), 168 (k)(2)(D)(i), and 168(k)(2)(E)), 170, 179E, 198, 220, 222, 223, 263, 280C, 312, 355, 613A, 954, 1043, 1221, 1245, 1355, 1397E, 1400A, 1400B, 7623, and 7872. For such taxable years, provisions of the Internal Revenue Code of 1986, as amended, which were as of January 1, 2006, enacted into law but not yet effective shall be effective for purposes of Georgia taxation on the same dates upon which they become effective for federal tax purposes. The provisions of this paragraph shall supersede and control over any provision of paragraph (14) of this Code section to the contrary.

(14.2) "Internal Revenue Code" or "Internal Revenue Code of 1986" means for taxable years beginning after December 31, 2006, but before January 1, 2008, the provisions of the United States Internal

Revenue Code of 1986, as amended, provided for in federal law enacted on or before January 1, 2008, except that Section 168(k) (but not excepting Section 168(k)(2)(A)(i), Section 168(k)(2)(D)(i), and Section 168(k)(2)(E)), Section 199, Section 1400L, Section 1400N(d)(1), Section 1400N(j), and Section 1400N(k) of the Internal Revenue Code of 1986, as amended, shall be treated as if they were not in effect. For such taxable years, provisions of the Internal Revenue Code of 1986, as amended, which were as of January 1, 2008, enacted into law but not yet effective shall be effective for purposes of Georgia taxation on the same dates upon which they become effective for federal tax purposes. The provisions of this paragraph shall supersede and control over any provision of paragraph (14) of this Code section to the contrary.

(14.3) "Internal Revenue Code" or "Internal Revenue Code of 1986" means for taxable years beginning after December 31, 2007, but before January 1, 2009, the provisions of the United States Internal Revenue Code of 1986, as amended, provided for in federal law enacted on or before January 1, 2009, except that Section 168(b)(3)(I), Section 168(e)(3)(B)(vii), Section 168(e)(3)(E)(ix), Section 168(e)(8), Section 168(k) (but not excepting Section 168(k)(2)(A)(i), Section 168(k)(2)(D)(i), and Section 168(k)(2)(E)), Section 168(m), Section 168(n), Section 172(b)(1)(F), Section 172(b)(1)(J), Section 172(j), Section 199, Section 1400L, Section 1400N(d)(1), Section 1400N(f), Section 1400N(j), Section 1400N(k), and Section 1400N(o) of the Internal Revenue Code of 1986, as amended, shall be treated as if they were not in effect, and except that Section 168(e)(7), Section 172(i)(1), and Section 1221 of the Internal Revenue Code of 1986, as amended, shall be treated as they were in effect before the 2008 enactment of federal Public Law 110-343. For such taxable years, provisions of the Internal Revenue Code of 1986, as amended, which were as of January 1, 2009, enacted into law but not yet effective shall be effective for purposes of Georgia taxation on the same dates upon which they become effective for federal tax purposes. The provisions of this paragraph shall supersede and control over any provision of paragraph (14) of this Code section to the contrary.

(15) "Internal Revenue Service" or "IRS" means the Internal Revenue Service of the United States Department of the Treasury.

(16) "Member of the armed forces" means commissioned officers and personnel below the grade of commissioned officers in all regular and reserve components of the uniformed services subject to the jurisdiction of the United States Department of Defense. The term also includes the Coast Guard, but it does not include civilian employees of the armed forces.

(17) "Municipality" means an incorporated municipality in this state.

(18) "Person" means any individual, firm, partnership, cooperative, nonprofit membership corporation, joint venture, association, company, corporation, agency, syndicate, estate, trust, business trust, receiver, fiduciary, or other group or combination acting as a unit, body politic, or political subdivision, whether public, private, or quasi-public.

(19) "Personal property" means all tangible personal property and all intangible personal property, as the terms are defined in this Code section.

(20) "Personal representative" means the duly qualified and acting personal representative of the estate of a decedent or, if there is no duly qualified and acting representative, the person in possession of any property of the decedent.

(21) "Public utility" means all railroad companies, street and suburban railroads, or sleeping car companies; persons or companies operating railroads, street railroads, suburban railroads, or sleeping cars in this state; all express companies including railroad companies doing express, telephone, or telegraph business (except small telephone companies or persons operating a telephone business, the value of whose capital stock or property is less than $5,000.00); all gas, electric light, electric power, hydroelectric power, steam heat, refrigerated air, dockage or cranage, canal, toll road, toll bridge, railroad equipment, and navigation companies; and any person or persons operating a gas, electric light, electric power, hydroelectric power, steam heat, refrigerated air, dockage or cranage, canal, toll road, toll bridge, railroad equipment, or navigation business, through their president, general manager, owner, or agent having control of the company's offices in this state.

(22) "Tangible personal property" means personal property which may be seen, weighed, measured, felt, or touched or which is in any other manner perceptible to the senses. The term "tangible personal property" shall not include intangible personal property. This paragraph shall not apply to Chapter 8 of this title relating to sales and use taxation.

(23) "Tax collector" means a county tax collector.

(24) "Tax commissioner" means a county tax commissioner.

(25) "Taxpayer" means any person required by law to file a return or to pay taxes.

(26) "Tax receiver" means a county tax receiver. (Code 1933, § 91A-102, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 2; Ga. L. 1981, p. 1857, § 2; Ga. L. 1981, p. 1903, § 1; Ga. L. 1982, p. 3, § 48; Ga. L. 1984, p. 1323, § 1; Ga. L. 1987, p. 191, § 1; Ga. L. 1988,

p. 475, § 1; Ga. L. 1989, p. 1402, § 1; Ga. L. 1990, p. 1350, § 1; Ga. L. 1991, p. 367, § 1; Ga. L. 1992, p. 1441, § 1; Ga. L. 1993, p. 728, § 1; Ga. L. 1993, p. 1402, § 16; Ga. L. 1994, p. 797, § 1; Ga. L. 1995, p. 324, § 1; Ga. L. 1996, p. 117, § 1; Ga. L. 1996, p. 130, § 1; Ga. L. 1996, p. 308, § 1; Ga. L. 1997, p. 396, § 1; Ga. L. 1998, p. 1224, § 1; Ga. L. 1999, p. 483, § 1; Ga. L. 2000, p. 1296, § 1; Ga. L. 2001, p. 1224, § 1; Ga. L. 2002, p. 439, § 1; Ga. L. 2003, p. 665, § 2; Ga. L. 2004, p. 410, § 2; Ga. L. 2005, p. 159, § 2/HB 488; Ga. L. 2006, p. 200, § 1/HB 1310; Ga. L. 2007, p. 2, §§ 1, 2/HB 357; Ga. L. 2008, p. 10, §§ 1, 2/HB 926; Ga. L. 2008, p. 324, § 48/SB 455; Ga. L. 2009, p. 6, §§ 1, 2/HB 74; Ga. L. 2010, p. 895, § 1/HB 1138; Ga. L. 2011, p. 38, § 1/HB 168; Ga. L. 2012, p. 694, § 1/HB 729; Ga. L. 2013, p. 7, § 1/HB 266; Ga. L. 2014, p. 231, § 1/HB 918; Ga. L. 2015, p. 2, § 1/HB 292.)

The 2011 amendment, effective April 27, 2011, in paragraph (14), substituted "2010" for "2009" and substituted "2011" for "2010" throughout, in the first sentence, inserted "Section 179(f),", added ", and except that the limitations provided in Section 179(b)(1) shall be $250,000.00 for tax years beginning in 2010 and shall be $250,000.00 for tax years beginning in 2011, and except that the limitations provided in Section 179(b)(2) shall be $800,000.00 for tax years beginning in 2010 and shall be $800,000.00 for tax years beginning in 2011" at the end, and deleted the former second sentence, which read: "For taxable years beginning on or after January 1, 2009, the terms 'Internal Revenue Code' or 'Internal Revenue Code of 1986' shall also include the provisions of federal Public Law 111-126 as enacted on January 22, 2010." See editor's note for applicability.

The 2012 amendment, effective May 1, 2012, substituted "January 1, 2011" for "January 1, 2010" and "January 1, 2012" for "January 1, 2011" throughout paragraph (14). See editor's note for applicability.

The 2013 amendment, effective March 5, 2013, in paragraph (14), substituted "January 1, 2012" for "January 1, 2011" twice; substituted "January 3, 2013" for "January 1, 2012" three times; substituted "beginning in 2010, shall be $250,000.00 for tax years beginning in 2011, shall be $250,000.00 for tax years beginning in 2012, and shall be $250,000.00 for tax years beginning in 2013" for "beginning in 2010 and shall be $250,000.00 for tax years beginning in 2011"; and substituted "beginning in 2010, shall be $800,000.00 for tax years beginning in 2011, shall be $800,000.00 for tax years beginning in 2012, and shall be $800,000.00 for tax years beginning in 2013, and provided that Section 1106 of federal Public Law 112-95 shall be treated as if it is in effect, except the phrase 'Code Section 48-2-35 (or, if later, November 15, 2013)' shall be substituted for the phrase 'section 6511(a) of such Code (or, if later, April 15, 2013),' and notwithstanding any other provision in this title, no interest shall be refunded with respect to any claim for refund filed pursuant to Section 1106 of federal Public Law 112-95." for "beginning in 2010 and shall be $800,000.00 for tax years beginning in 2011." See editor's note for applicability.

The 2014 amendment, effective April 15, 2014, in paragraph (14), twice substituted "January 1, 2013" for "January 1, 2012" and three times substituted "January 1, 2014" for "January 3, 2013". See editor's note for applicability.

The 2015 amendment, effective March 6, 2015, in paragraph (14), substituted "January 1, 2014" for "January 1, 2013" twice, substituted January 1, 2015" for "January 1, 2014" three times, substituted "November 15, 2015" for "November 15, 2013" and "April 15, 2015" for "April 15, 2013" once each, deleted "and" following "for tax years beginning in 2012,"

twice, inserted "and shall be $500,000.00 for tax years beginning in 2014,", inserted "and shall be $2 million for tax years beginning in 2014,", and inserted "as amended by federal Public Law 113-243". See editor's note for applicability.

Editor's notes. — Ga. L. 2011, p. 38, § 10, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2010.

Ga. L. 2012, p. 694, § 5(b)/HB 729, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2011.

Ga. L. 2013, p. 7, § 7(a)/HB 266, not codified by the General Assembly, provides, in part, that the 2013 amendment shall be applicable to all taxable years beginning on or after January 1, 2012, except the provisions in Section 1 relating to Section 1106 of federal Public Law 112-95 shall also apply to taxable years beginning before January 1, 2012.

Ga. L. 2014, p. 231, § 3/HB 918, not codified by the General Assembly, provides that: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and Section 1 shall be applicable to all taxable years beginning on or after January 1, 2013." This Act became effective April 15, 2014.

Ga. L. 2015, p. 2, § 1/HB 292, not codified by the General Assembly, provides that: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall be applicable to all taxable years beginning on or after January 1, 2014." This Act became effective March 6, 2015.

JUDICIAL DECISIONS

Public utility. — In a gas company's suit against the state revenue commissioner for mandamus compelling the commissioner to accept its property tax returns under O.C.G.A. §§ 48-1-2(21) and 48-5-511(a), remand was proper to determine if the company had an acceptable alternative remedy in its pending county tax appeals under O.C.G.A. § 48-5-311, if the commissioner could be made a party to those appeals by joinder or some other procedure. Southern LNG, Inc. v. MacGinnitie, 294 Ga. 657, 755 S.E.2d 683 (2014).

CHAPTER 2

STATE ADMINISTRATIVE ORGANIZATION, ADMINISTRATION, AND ENFORCEMENT

Article 1

State Administrative Organization

Sec.

Article 2

Administration

ARTICLE 1

STATE ADMINISTRATIVE ORGANIZATION

48-2-1. Department of Revenue.

JUDICIAL DECISIONS

Cited in Southern LNG, Inc. v. MacGinnitie, 294 Ga. 657, 755 S.E.2d 683 (2014).

48-2-5. Office of deputy state revenue commissioner.

(a) There is created the office of deputy state revenue commissioner, who shall exercise the authority of the commissioner in matters specified by law and in any other such matters as the commissioner may delegate to him or her in writing. The actions of the deputy commissioner, within the scope of his or her authority, shall have the same force and effect as the actions of the commissioner.

(b) The deputy commissioner shall be appointed by the commissioner. He or she shall hold office at the pleasure of the commissioner and shall not be subject to the state system of personnel administration provided by Chapter 20 of Title 45. The deputy commissioner shall take the oath of office of the commissioner as provided in subsection (d) of Code Section 48-2-2.

(c) The deputy commissioner shall receive a salary as determined by the commissioner, subject to the approval of the Office of Planning and Budget and paid from funds appropriated by the department. The deputy commissioner's salary shall in no event exceed the salary of the commissioner.

(d) The deputy commissioner shall execute and file an official surety bond approved as to form and sufficiency by the Attorney General in the same amount as required for the commissioner by subsection (e) of Code Section 48-2-2. The premium on the bond shall be paid as an expense of the department.

(e) The deputy commissioner shall have the authority of the commissioner to:

(1) Issue licenses;

(2) Make proposed and final assessments;

(3) Deny protests and claims for refund;

(4) Issue summons of garnishment;

(5) Enter into agreements extending statutory periods of limitation;

(6) Issue, amend, and cancel tax executions; and

(7) Execute all documents and papers necessary for the performance of his or her or the commissioner's duties or for the exercise of his or her authority or the authority of the commissioner which has been delegated to him or her in writing. (Ga. L. 1951, p. 614, § 2; Ga. L. 1963, p. 133, § 1; Ga. L. 1970, p. 108, § 1; Code 1933, § 91A-205, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 5; Ga. L. 1983, p. 526, § 2; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-88/HB 642.)

The 2012 amendment, effective July 1, 2012, inserted "or her" throughout this Code section; and, in subsection (b), in the second sentence, inserted "or she", and substituted "state system of personnel administration provided by Chapter 20 of Title 45" for "State Personnel Administration".

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

48-2-6. Departmental organization; employees; compensation; collection of delinquent taxes by contractors.

(a) The commissioner shall establish by executive order such units within the department as he or she deems proper for its administration and shall designate persons to be directors and assistant directors of such units to exercise such authority as he or she may delegate to them in writing.

(b) The commissioner shall have the authority to employ as many persons as he or she deems necessary for the administration of the department and for the discharge of the duties of his or her office. He or she shall issue all necessary directions, instructions, orders, and rules applicable to such persons. He or she shall have authority, as he or she deems proper, to employ, assign, compensate, and discharge employees of the department within the limitations of the department's appropriation, the requirements of the state system of personnel administration, including the rules and regulations of the State Personnel Board, and the restrictions set forth by law.

(c) All employees of the department shall be compensated upon a fixed salary basis and no person shall be compensated for services to the department on a commission or contingent fee basis.

(d) Neither the commissioner nor any officer or employee of the department shall be given or receive any fee, compensation, loan, gift, or other thing of value in addition to the compensation and expense allowance provided by law for any service or pretended service either rendered or to be rendered as commissioner or as an officer or employee of the department.

(e) The commissioner is authorized to provide for the collection of delinquent taxes, including penalties and interest, by contractors. Any such contractors must be approved by the commissioner. No employee of the department shall be approved as a contractor under this subsection. Such contractors shall be compensated only on a commission or contingent fee basis. (Ga. L. 1937-38, Ex. Sess., p. 77, § 11; Ga. L. 1951, p. 360, § 22; Ga. L. 1960, p. 944, § 1; Ga. L. 1967, p. 788, § 7; Code 1933, § 91A-206, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1995, p. 781, § 3; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-89/HB 642.)

The 2012 amendment, effective July 1, 2012, inserted "or she" in subsections (a) and (b); and, in subsection (b), inserted "or her" in the first sentence, and substituted "state system of personnel administration, including the rules and regulations of the State Personnel Board" for "State Personnel Administration" in the third sentence.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

Law reviews. — For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U.L. Rev. 217 (2011).

48-2-14. Official seal.

The commissioner shall have an official seal of such device as he or she shall select, subject to the approval of the Governor. (Ga. L. 1931, p. 7, § 81; Code 1933, § 92-4504; Code 1933, § 91A-210, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2011, p. 99, § 91/HB 24.)

The 2011 amendment, effective January 1, 2013, inserted "or she" in the first sentence and deleted the former second sentence, which read: "Any certificate or other legal document or paper executed by the commissioner in the exercise of any authority conferred upon him by law, which paper is sealed with the seal of his office, and all copies or photographic copies of papers certified by him and authenticated by the seal shall be evidence equally in all cases and, in like manner as the original of the document or paper, shall be primary evidence in all cases of the contents of the original, and shall be admissible in any court in this state." See editor's note for applicability.

Editor's notes. — Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that the amendment of this Code section by that Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews. — For article, "Evidence," see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

48-2-15. Confidential information.

(a) Except as otherwise provided in this Code section, information secured by the commissioner incident to the administration of any tax shall be confidential and privileged. Neither the commissioner nor any officer or employee of the department shall divulge or disclose any such confidential information obtained from the department's records or from an examination of the business of any taxpayer to any person other than the commissioner, an officer or employee of the department, an officer of the state or local government entitled in his official capacity to have access to such information, or the taxpayer.

(b) This Code section shall not:

(1) Be construed to prevent the use of confidential information as evidence before any state or federal court in the event of litigation involving tax liability of any taxpayer;

(2) Be deemed to prevent the print or electronic publication of statistics so arranged as not to reveal information respecting an individual taxpayer;

(3) Apply in any way whatsoever to any official finding of the commissioner with respect to any assessment or any information properly entered upon an assessment roll or other public record;

(4) Affect any information which in the regular course of business is by law made the subject matter of a public document in any federal or state office or in any local office in this state; or

(5) Apply to information, records, and reports required and obtained under Article 1 of Chapter 9 of this title, which requires distributors of motor fuels to make reports of the amounts of motor fuels sold and used in each county by the distributor, or under Article 2 of Chapter 9 of this title, relating to road tax on motor carriers.

(c) The provisions of this Code section shall not apply with respect to Chapter 7 of this title, relating to income taxation.

(d) Notwithstanding this Code section, the commissioner, upon request by resolution of the governing authority of any municipality of this state having a population of 350,000 or more according to the United States decennial census of 1970 or any future such census, shall furnish to the finance officer or taxing official of the municipality any pertinent tax information from state tax returns to be used by those officials in the discharge of their official duties. Any information so furnished shall retain, in the hands of the local officials, its privileged and confidential nature to the same extent and under the same conditions as that information is privileged and confidential in the hands of the commissioner. The commissioner may make a nominal charge for any information so furnished, not to exceed the actual cost of furnishing the information. Nothing contained in this subsection shall be construed to prevent the use of the information as evidence in any state or federal court in the event of litigation involving any municipal or county tax liability of a taxpayer.

(e) This Code section shall not be construed to prohibit persons or groups of persons other than employees of the department from having access to tax information when necessary to conduct research commissioned by the department or where necessary in connection with the processing, storage, transmission, and reproduction of such tax information; the programming, maintenance, repair, testing, and procurement of equipment; and the providing of other services for purposes of tax administration. Any such access shall be pursuant to a written agreement with the department providing for the handling, permitted uses, and destruction of such tax information, requiring security clearance checks for such persons or groups of persons similar to those required of employees of the department, and including such other terms and conditions as the department may require to protect the confidentiality of the tax information to be disclosed. Any person who divulges or makes known any tax information obtained under this subsection shall be subject to the same civil and criminal penalties as those provided for divulgence of information by employees of the department. (Ga. L. 1937-38, Ex. Sess., p. 77, § 12; Ga. L. 1945, p. 160, § 1; Ga. L. 1969, p. 1137, § 1; Code 1933, § 91A-212, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, §§ 8, 9; Ga. L. 1981, p. 1857, § 4; Ga. L. 1991, p. 303, § 1; Ga. L. 2006, p. 200, § 2/HB 1310; Ga. L. 2010, p. 838, § 11/SB 388; Ga. L. 2011, p. 297, § 1/HB 346.)

The 2011 amendment, effective May 11, 2011, in subsection (e), in the first sentence, substituted "or where necessary in connection with the processing, storage, transmission, and reproduction of such tax information; the programming, maintenance, repair, testing, and procurement of equipment; and the providing of other services for purposes of tax administration" for "and when necessary for data processing operations and maintenance of data processing equipment, provided the persons or groups of persons have obtained prior written approval from the commissioner and are subject to the direct security control of department personnel during all periods of access", and added the second sentence.

48-2-15.2. "Ruling" defined; regulations prescribing guidelines; precedential value of ruling.

(a) As used in this Code section, the term "ruling" means a written determination that is issued to a person by the commissioner pursuant to regulations promulgated for that purpose, in response to such person's written inquiry about his or her status for tax purposes or the tax effects of acts or transactions, and is based on applying the tax statutes, regulations, or other legal authority to such person's specific set of facts. Such term thus does not include, for example, notices of proposed or final assessment or decisions thereon, decisions on claims for refund, decisions to accept or reject offers in compromise, voluntary disclosure or closing agreements, and responses to petitions or applications under Code sections permitting the commissioner to waive penalty or interest.

(b) The commissioner is authorized to promulgate regulations prescribing guidelines and procedures for the submission of rulings, issuance or denial of issuance of rulings, and the redaction and disclosure of rulings to the public. The commissioner may not disclose a ruling to the public without first deleting the name, address, and other identifying details of the person to whom the ruling was issued.

(c) A ruling shall have no precedential value except to the person to whom the ruling was issued and then only for the specific transaction addressed in the ruling. (Code 1981, § 48-2-15.2, enacted by Ga. L. 2012, p. 735, § 1/HB 846.)

Effective date. — This Code section became effective May 1, 2012.

Editor's notes. — Ga. L. 2012, p. 735, § 4(b)/HB 846, not codified by the General Assembly, provides that this Code section "shall only be applied to rulings requested after the effective date of this Act." This Act became effective May 1, 2012.

48-2-18. State Board of Equalization; duties.

(a) There is established a board composed of the commissioner, the state auditor, and the executive director of the State Properties Commission.

(b) The board created by this Code section shall be designated the State Board of Equalization. The chairman and administrative officer of the board shall be the commissioner. Each year, when the digest of assessments proposed by the commissioner is complete, the commissioner shall submit the digest to the State Board of Equalization which shall carefully examine the proposed assessments of each class of taxpayers or property and the digest of proposed assessments as a whole to determine that they are reasonably apportioned among the several tax jurisdictions and reasonably uniform with the values set on other classes of property throughout the state. If the board determines that the proposed assessed values of any one or more of the classes of taxpayers or property or the digest as a whole does not reasonably conform to the values set for other property throughout the state, it shall inquire as to the reason for the lack of conformity and shall adjust and equalize the same by either adding or subtracting a fixed percentage to the class of taxpayer, to the class of property, or to the digest as a whole, as the case may be.

(c) As chairperson and chief administrative officer of the board, the commissioner shall furnish to the board all necessary records and files and in this capacity may compel the attendance of witnesses and the production of books and records or other documents as the commissioner is empowered to do in the administration of the tax laws. After final approval by the State Board of Equalization of the digest of proposed assessments made by the commissioner and after any adjustments by the board as authorized by this Code section are made, the commissioner shall notify within 30 days each taxpayer in writing of the proposed assessment of its property. At the same time, the commissioner shall notify in writing the board of tax assessors of such county, as outlined in Code Section 48-5-511, of the total proposed assessment of the property located within the county of taxpayers who are required to return their property to the commissioner. If any such taxpayer notifies the commissioner and the board of tax assessors in any such county of its intent to dispute a portion of the proposed assessment within 20 days after receipt of the notice, the county board of tax assessors shall include in the county digest only the undisputed amount of the assessment, and the taxpayer may challenge the commissioner's proposed assessment in an appeal filed in the Superior Court of Fulton County or with the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50 within 30 days of receipt of the notice. In any such appeal to the superior court, the taxpayer shall have the right of discovery as provided in Chapter 11 of Title 9, the "Georgia Civil Practice Act." In any such appeal to the Georgia Tax Tribunal, discovery shall be as provided in Chapter 13A of Title 50, the "Georgia Tax Tribunal Act of 2012." Upon conclusion of the appeal, the taxpayer shall remit to the appropriate counties any additional taxes owed, with

interest at the rate provided by law for judgments. Such interest shall accrue from the date the taxes would have been due absent the appeal to the date the additional taxes are remitted.

(d) Within 30 days after receipt of the proposed digest of assessments, the county board of tax assessors shall make the final assessment of the property in question and provide notice to the taxpayer. Such notice and any appeal therefrom shall be accomplished as is provided by Code Sections 48-5-306 and 48-5-311. In the event of an appeal, the department shall, upon request of the local board of tax assessors and without any charge or cost therefor, provide the local board of tax assessors with any and all technical assistance available from the resources of the department, including without limitation expert testimony by the employees of the department.

(e) Assessments made in accordance with subsection (d) of this Code section shall be added to the regular county digest at the time the digest is transmitted to the commissioner or at such time as the digest is otherwise required to be compiled. In the event that the commissioner has not provided to the board of tax assessors by August 1 of a tax year the notice of proposed assessments set forth in subsection (c) of this Code section for taxpayers who are required to return their property to the commissioner pursuant to Code Section 48-5-511, the tax commissioner or tax receiver of the county where such property is located may issue an interim tax bill to such taxpayers, owning property in the county in an amount equal to 85 percent of such taxpayer's property tax bill for the immediately preceding tax year or, in the event that such tax year is under appeal, the tax bill for the most recent tax year in which the taxes for such property were finally assessed. At such time as the county board of tax assessors adds the assessments for the tax year made in accordance with subsection (d) of this Code section to the regular county digest, the tax commissioner or tax receiver shall issue a corrected tax bill to each taxpayer who received an interim tax bill, such corrected tax bill to be in an amount based upon the assessed value of such taxpayer's property shown on the regular county digest and such taxpayer shall remit any additional taxes due or, in the event of overpayment, shall be entitled to a tax refund, in either case, without interest or penalty. Nothing in this subsection is intended to alter a taxpayer's right to appeal from either the commissioner's notice of proposed assessment or the county board of assessors' final assessment under the procedures set forth in subsections (c) and (d) of this Code section. The billing pursuant to this Code section shall not subject the tax commissioner or tax receiver of the county to the forfeiture provisions of Code Section 48-5-135.

(f) The notice and appeal procedures provided for in this Code section shall not apply to any decision of the board relating to the

assessed value of motor vehicle property. (Ga. L. 1953, Jan.-Feb. Sess., p. 185, § 1; Ga. L. 1972, p. 1015, § 1702; Ga. L. 1972, p. 1120, § 1; Code 1933, § 91A-217, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 1834, § 1; Ga. L. 1984, p. 352, § 1; Ga. L. 1985, p. 149, § 48; Ga. L. 1987, p. 485, § 1; Ga. L. 1988, p. 13, § 48; Ga. L. 1988, p. 1568, § 1; Ga. L. 1988, p. 1763, § 2; Ga. L. 1992, p. 1346, § 1; Ga. L. 2010, p. 1104, § 8-1/SB 346; Ga. L. 2012, p. 318, § 1/HB 100; Ga. L. 2013, p. 141, § 48/HB 79.)

The 2012 amendment, effective January 1, 2013, in subsection (c), in the first sentence, substituted "chairperson" for "chairman" near the beginning and substituted "the commissioner" for "he" near the middle, substituted "commissioner" for "commission" at the end of the third sentence, inserted "or with the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50", in the fifth sentence, inserted "to the superior court", and added the sixth sentence. See editor's note for applicability.

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, deleted former subsection (g) which read: "The provisions of this Code section shall not apply with respect to appeals which are within the jurisdiction of the Ad Valorem Assessment Review Commission."

Editor's notes. — Ga. L. 2012, p. 318, § 16(b)/HB 100, not codified by the General Assembly, provides that: "Sections 1 through 14 of this Act shall become effective on January 1, 2013, provided that cases pending on January 1, 2013, shall continue to be governed by the law in effect on December 31, 2012, until the conclusion of the case."

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 70 (2012).

JUDICIAL DECISIONS

Utility whose returns are not accepted by the commissioner. — In a gas company's suit against the state revenue commissioner for mandamus compelling the commissioner to accept its property tax returns under O.C.G.A. §§ 48-1-2(21) and 48-5-511(a), remand was proper to determine if the company had an acceptable alternative remedy in its pending county tax appeals under O.C.G.A. § 48-5-311, if the commissioner could be made a party to those appeals by joinder or some other procedure. Southern LNG, Inc. v. MacGinnitie, 294 Ga. 657, 755 S.E.2d 683 (2014).

RESEARCH REFERENCES

ALR. — What constitutes plain, speedy, and efficient state remedy under Tax Injunction Act (28 USCS § 1341), prohibiting federal district courts from interfering with assessment, levy, or collection of state business taxes, 31 ALR Fed. 2d 237.

ARTICLE 2

ADMINISTRATION

48-2-32. Forms of payment.

(a) The commissioner may receive in payment of taxes and license fees personal, company, certified, treasurer's, and cashier's checks and

bank, postal, and express money orders to the extent and under the conditions which he may reasonably prescribe by regulations or instructions.

(b) A check or money order, when authorized, shall be deemed to be payment as of the time it is received by the commissioner, provided the check or money order is duly paid upon presentation to the drawee. The time of receipt as shown by the records of the department shall be prima facie correct as to the time of actual receipt.

(c) If a check or money order so received is not duly paid, the person on whose account the check or money order was tendered shall remain liable for the payment of the tax or license fee and for all legal penalties and additions to the same extent as if the check or money order had not been tendered. Delay in the presentation for payment of the check or money order shall not absolve the person of this liability.

(d) If any certified, treasurer's, or cashier's check or money order so received is not duly paid, the state, in addition to its right to exact payment from the party originally obligated therefor, shall have a lien for the amount of the check or money order upon all assets of the bank or trust company on which drawn or for the amount of the money order upon all the assets of the issuer of the money order. The amount of the check or money order shall be paid out of such assets in preference to any other claims whatsoever against the banker or issuer.

(e)(1) On and after July 1, 2004, if any check or money order tendered to the commissioner in payment of any tax or license fee is not duly paid when presented to the drawee or issuer for payment, there shall be paid by the person who tendered the check or money order upon notice and demand of the commissioner or his delegate, in the same manner as tax, a penalty in an amount equal to 2 percent of the amount of the check or money order, unless the amount of the check or money order is less than $1,250.00, in which case the penalty under this Code section shall be $25.00. This penalty shall be in addition to any other penalties provided by law.

(2) This subsection shall not apply if the person who tendered the check or money order shows to the commissioner's reasonable satisfaction that the check or money order was tendered in good faith and with reasonable cause to believe it would be duly paid.

(f)(1) As used in this subsection, the term "electronic funds transfer" means a method of making financial payments from one party to another through a series of instructions and messages communicated electronically, via computer, among financial institutions. Such term shall not include the electronic filing of tax returns.

(2) The commissioner may require that any person or business owing more than $10,000.00 in connection with any return, report, or

other document required to be filed with the department on or after July 1, 1992, shall pay any such sales tax, use tax, withholding tax, motor fuel distributor tax, corporate estimated income tax, or individual estimated income tax liability to the state by electronic funds transfer so that the state receives collectable funds on the date such payment is required to be made. In emergency situations, the commissioner may authorize alternative means of payment in funds immediately available to the state on the date of payment.

(2.1)(A) The commissioner may require that any person or business owing more than $1,000.00 in connection with any return, report, or other document pertaining to sales tax, use tax, withholding tax, or motor fuel distributor tax required to be filed with the department for tax periods beginning on or after January 1, 2010, and prior to January 1, 2011, shall pay any such sales tax, use tax, withholding tax, or motor fuel distributor tax liability to the state by electronic funds transfer so that the state receives collectable funds on the date such payment is required to be made. In emergency situations, the commissioner may authorize alternative means of payment in funds immediately available to the state on the date of payment.

(B) The commissioner may require that any person or business owing more than $500.00 in connection with any return, report, or other document pertaining to sales tax, use tax, withholding tax, or motor fuel distributor tax required to be filed with the department for tax periods beginning on or after January 1, 2011, shall pay any such sales tax, use tax, withholding tax, or motor fuel distributor tax liability to the state by electronic funds transfer so that the state receives collectable funds on the date such payment is required to be made. In emergency situations, the commissioner may authorize alternative means of payment in funds immediately available to the state on the date of payment.

(3) In addition to the requirements contained in paragraph (2) of this subsection, every employer whose tax withheld or required to be withheld under Code Section 48-7-103 exceeds $50,000.00 in the aggregate for the lookback period as defined in paragraph (4) of subsection (b) of Code Section 48-7-103 must pay the taxes by electronic funds transfer as follows:

(A) For paydays occurring on Wednesday, Thursday, or Friday, the taxes must be remitted on or before the following Wednesday or, in the case of a holiday, the next banking day thereafter;

(B) For paydays occurring on Saturday, Sunday, Monday, or Tuesday, the taxes must be remitted on or before the following Friday or, in the case of a holiday, the next banking day thereafter; and

(C) Notwithstanding any other provision of this paragraph to the contrary, for employers whose tax withheld or required to be withheld exceeds $100,000.00 for the payday, the taxes must be remitted by the next banking day.

(4) In addition to the requirements contained in paragraphs (2), (2.1), and (3) of this subsection, every third-party payroll provider who prepares or remits, or both, Georgia withholding tax for more than 250 employers must pay the taxes by electronic funds transfer. Also, such third-party payroll providers must submit all state withholding tax registration applications electronically in the manner specified by the department. Any state withholding tax registration applications that are not submitted electronically by such third-party payroll provider in the manner specified by the department shall not be considered by the department.

(5) The commissioner is specifically authorized to establish due dates and times for the initiation of electronic payments, establish an implementation schedule, promulgate regulations, and prescribe rules and procedures to implement this subsection.

(6) A penalty of 10 percent of the amount due shall be added to any payment which is made in other than immediately available funds which are specified by regulation of the commissioner unless the commissioner has authorized an alternate means of payment in an emergency.

(7) In addition to authority granted in Code Section 48-2-41, the commissioner is authorized to waive the collection of interest on electronic funds transfer payments, not to exceed the first two scheduled payments, whenever and to the extent that the commissioner reasonably determines that the default giving rise to the interest charge was due to reasonable cause and not due to gross or willful neglect or disregard of this subsection or regulations or instructions issued pursuant to this subsection.

(8) Notwithstanding any provision of law to the contrary, the commissioner is authorized to promulgate rules and regulations setting forth the requirements for electronically transmitting all required returns, reports, or other documents required to be filed with taxes paid by electronic funds transfer.

(9) Notwithstanding any provision of law to the contrary, the commissioner is authorized to promulgate rules and regulations setting forth the procedure for satisfying the signature requirement for returns whether by electronic signature, voice signature, or other means, so long as appropriate security measures are implemented which assure security and verification of the signature procedure.

(10) Notwithstanding any provision of law to the contrary, the commissioner is authorized to pay all tax refunds by electronic funds

transfer when requested by a taxpayer who has filed his or her return electronically with the department. (Ga. L. 1960, p. 211, § 1; Code 1933, § 91A-232, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1991, p. 715, § 1; Ga. L. 1992, p. 1234, § 1; Ga. L. 1993, p. 91, § 48; Ga. L. 1996, p. 307, § 1; Ga. L. 1997, p. 734, § 2; Ga. L. 2003, p. 665, § 3; Ga. L. 2004, p. 410, §§ 3, 4; Ga. L. 2004, p. 631, § 48; Ga. L. 2005, p. 159, § 4/HB 488; Ga. L. 2006, p. 200, § 3/HB 1310; Ga. L. 2009, p. 648, § 1/HB 334; Ga. L. 2014, p. 231, § 2/HB 918.)

The 2014 amendment, effective April 15, 2014, in paragraph (f)(4), inserted ", (2.1)," near the beginning and added the last two sentences.

48-2-35. Refunds.

(a) A taxpayer shall be refunded any and all taxes or fees which are determined to have been erroneously or illegally assessed and collected from such taxpayer under the laws of this state, whether paid voluntarily or involuntarily, and shall be refunded interest, except as provided in subsection (b) of this Code section, on the amount of the taxes or fees at the rate of 1 percent per month from the date of payment of the tax or fee to the commissioner. For the purposes of this Code section, any period of less than one month shall be considered to be one month. Refunds shall be drawn from the treasury on warrants of the Governor issued upon itemized requisitions showing in each instance the person to whom the refund is to be made, the amount of the refund, and the reason for the refund.

(b) No interest shall be paid if the taxes or fees were erroneously or illegally assessed and collected due to the taxpayer failing to claim any credits listed in Article 2 of Chapter 7 of this title on or before the due date for filing the applicable income tax return, including any extensions which have been granted.

(c)(1)(A) A claim for refund of a tax or fee erroneously or illegally assessed and collected may be made by the taxpayer at any time within three years after:

(i) The date of the payment of the tax or fee to the commissioner; or

(ii) In the case of income taxes, the later of the date of the payment of the tax or fee to the commissioner or the due date for filing the applicable income tax return, including any extensions which have been granted.

(B) Each claim shall be filed in writing in the form and containing such information as the commissioner may reasonably require and shall include a summary statement of the grounds upon which the taxpayer relies and an identification of the transactions being contested.

(C) Should any person be prevented from filing such a claim because of service of such person or such person's counsel in the armed forces during such period, the period of limitation shall date from the discharge of such person or such person's counsel from such service.

(D) A claim for refund may not be submitted by the taxpayer on behalf of a class consisting of other taxpayers who are alleged to be similarly situated.

(2) In the event the taxpayer desires a conference or hearing before the commissioner or the commissioner's delegate in connection with any claim for refund, he or she shall specify such desire in writing in the claim and, if the claim conforms with the requirements of this Code section, the commissioner shall grant a conference at a time he or she shall reasonably specify. A taxpayer may contest any claim for refund that is denied in whole or in part by filing with the commissioner a written protest at any time within 30 days from the date of notice of refund denial or partial payment. Such 30 day period shall be extended for such additional period as may be agreed upon in writing between the taxpayer and the commissioner during the initial 30 day period or any extension thereof. In the event the taxpayer wishes to request a conference, that request shall be included in the written protest. All protests shall be prepared in the form and contain such information as the commissioner shall reasonably require and shall include a summary statement of the grounds upon which the taxpayer relies, an identification of the transactions being contested, and the reasons for disputing the findings of the commissioner. The commissioner shall grant a conference before the commissioner's designated officer or agent at a time specified and shall make reasonable rules governing the conduct of conferences. The discretion given in this Code section to the commissioner shall be reasonably exercised on all occasions.

(3) The commissioner or the commissioner's delegate shall consider information contained in the taxpayer's claim for refund, together with such other information as may be available, and shall approve or deny the taxpayer's claim and notify the taxpayer of the action.

(4) Any taxpayer whose claim for refund is denied by the commissioner or the commissioner's delegate or whose claim is not decided by the commissioner or the commissioner's delegate within one year from the date of filing the claim shall have the right to bring an action for a refund in the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50 or in the superior court of the county of the residence of the taxpayer, except that:

(A) If the taxpayer is a public utility or a nonresident, the taxpayer shall have the right to bring an action for a refund in the

Georgia Tax Tribunal in accordance with Chapter 13A of Title 50 or in the superior court of the county in which is located the taxpayer's principal place of doing business in this state or in which the taxpayer's chief or highest corporate officer or employee resident in this state maintains an office; or

(B) If the taxpayer is a nonresident individual or foreign corporation having no place of doing business and no officer or employee resident and maintaining an office in this state, the taxpayer shall have the right to bring an action for a refund in the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50 or in the Superior Court of Fulton County or in the superior court of the county in which the commissioner in office at the time the action is filed resides.

(5) An action for a refund pursuant to paragraph (4) of this subsection shall not be brought by the taxpayer on behalf of a class consisting of other taxpayers who are alleged to be similarly situated.

(6)(A) No action or proceeding for the recovery of a refund under this Code section shall be commenced before the expiration of one year from the date of filing the claim for refund unless the commissioner or the commissioner's delegate renders a decision on the claim within that time, nor shall any action or proceeding be commenced after the later of:

(i) The expiration of two years from the date the claim is denied; or

(ii) If a valid protest is filed under paragraph (2) of this subsection, 30 days after the date of the department's notice of decision on such protest.

(B) The period prescribed in this paragraph for filing an action for refund shall be extended for such period as may be agreed upon in writing between the taxpayer and the commissioner prior to the expiration of such period or any extension thereof.

(d) In the event any taxpayer's claim for refund is approved by the commissioner or the commissioner's delegate and the taxpayer has not paid other state taxes which have become due, the commissioner or department may offset any existing liabilities against the refund. Once the offset authorized by this subsection occurs, the refund shall be deemed granted and the amount of the offset shall be considered for all purposes as a payment toward the particular tax liabilities at issue. Any excess refund amount after any offsets have been applied shall be refunded to the taxpayer at the same time the offset is taken.

(e) This Code section shall not apply to taxes paid for alcoholic beverages pursuant to Title 3.

(f) For purposes of all claims for refund of sales and use taxes erroneously or illegally assessed and collected, the term "taxpayer," as defined under Code Section 48-2-35.1, shall apply. (Ga. L. 1937-38, Ex. Sess., p. 77, § 34; Ga. L. 1945, p. 272, § 1; Ga. L. 1955, p. 455, § 1; Ga. L. 1971, p. 378, § 1; Ga. L. 1973, p. 507, § 1; Ga. L. 1975, p. 156, §§ 7, 8; Code 1933, § 91A-245, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 11; Ga. L. 1979, p. 1078, §§ 1, 2; Ga. L. 1992, p. 1458, § 4; Ga. L. 2000, p. 777, § 1; Ga. L. 2003, p. 355, §§ 1, 2; Ga. L. 2003, p. 429, § 1; Ga. L. 2005, p. 159, § 5/HB 488; Ga. L. 2006, p. 72, § 48/SB 465; Ga. L. 2009, p. 816, § 3/HB 485; Ga. L. 2012, p. 318, § 2/HB 100.)

The 2012 amendment, effective January 1, 2013, inserted "Georgia Tax Tribunal in accordance with Chapter 13A of Title 50 or in the" throughout paragraph (c)(4). See editor's note for applicability.

Editor's notes. — Ga. L. 2012, p. 318, § 16(b)/HB 100, not codified by the General Assembly, provides that: "Sections 1 through 14 of this Act shall become effective on January 1, 2013, provided that cases pending on January 1, 2013, shall continue to be governed by the law in effect on December 31, 2012, until the conclusion of the case."

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 70 (2012).

JUDICIAL DECISIONS

Analysis

General Consideration

Standing and Consent to Bring Action Against State

General Consideration

Direct cause of action against dealer not permitted. — Since the plain language of O.C.G.A. § 48-2-35.1(d) provides that a person may seek a refund of erroneously paid sales tax from a dealer who collected and remitted the tax to the commissioner or directly from the commissioner, but does not mention a direct cause of action against the dealer, the customers were not authorized to bring a direct action for a refund of allegedly over-collected sales tax against the power company. Ga. Power Co. v. Cazier, 321 Ga. App. 576, 740 S.E.2d 458 (2013).

Standing and Consent to Bring Action Against State

No standing to claim refund. — Trial court did not err in dismissing a bank's complaint alleging that the bank was entitled to a refund for sales tax paid under the General Refund Statute, O.C.G.A. § 48-2-35, because the bank was not a taxpayer entitled to a refund under O.C.G.A. § 48-2-35 since the bank was simply a third-party lender that contracted to advance the money for the consumer, and ultimately the merchant, to meet their obligations to pay the sales tax; the bank's recourse was against the consumer who defaulted on the debt or possibly through any provisions in the credit card program contracts assigning responsibility for bad debts among the various parties. Citibank (South Dakota), N.A. v. Graham, 315 Ga. App. 120, 726 S.E.2d 617 (2012), cert. denied, No. S12C1281, 2012 Ga. LEXIS 1017 (Ga. 2012).

RESEARCH REFERENCES

ALR. — What constitutes plain, speedy, and efficient state remedy under Tax Injunction Act (28 USCS § 1341), prohibiting federal district courts from interfering

with assessment, levy, or collection of state business taxes, 31 ALR Fed. 2d 237.

48-2-35.1. Refund of sales and use taxes; expedited refunds.

(a) If a certificate or exemption determination letter issued by the commissioner certifying that the purchaser is entitled to purchase tangible personal property or taxable services without the payment of sales and use tax has not been obtained and used prior to purchasing such tangible personal property or taxable services, a refund of sales and use taxes shall be made without interest.

(b) Any taxpayer who wishes to expedite the payment of a sales and use tax claim for refund may apply to the commissioner for such expedited refund; and as part of such application the taxpayer shall file a bond that is satisfactory to the commissioner as security for the repayment of such refund and any applicable tax, interest, penalties, fees, or costs in the event that the commissioner determines within the applicable statute of limitations that all or a portion of such refund was paid in error. The commissioner shall issue the refund within 30 days of the date of the posting of the approved bond. Any assessment of tax, interest, penalties, fees, or costs related to the payment of such refund claim shall be made within three years after the date that such refund was paid by the commissioner.

(c)(1) As used in this subsection, the term:

(A) "Disregard" means any careless, reckless, or intentional disregard.

(B) "Excessive amount" means that portion of the claim for refund that exceeds the amount that is eligible for refund and for which there is no reasonable basis.

(C) "Frivolously filed" means a sales and use tax claim for refund in which the amount claimed exceeds the amount eligible for refund by at least 50 percent.

(D) "Negligence" includes any failure to make a reasonable attempt to comply with the provisions of this title.

(E) "Reasonable basis" means a position that is reasonably based on one or more of the following authorities: applicable provisions of this title and other statutory provisions; proposed and adopted regulations construing such statutes; court cases; official opinions of the Attorney General; and letter rulings, policy statements, informational bulletins, and other administrative pronouncements published by the commissioner. Notwithstanding the preceding list of authorities, an authority shall not continue to be an authority to

the extent it is overruled or modified, implicitly or explicitly, by a body with the power to overrule or modify the earlier authority.

(2) Any taxpayer who frivolously files a sales and use tax claim for refund shall be subject to a penalty of 20 percent of the excessive amount. No penalty shall be assessed pursuant to this subsection against any portion of an excessive amount for which a refund is claimed in good faith and the filing of which was not due to negligence or disregard of the law. The determination of whether a taxpayer acted in good faith shall be made on a case-by-case basis, taking into account all pertinent facts and circumstances. Generally, the most important factor in such determination is the extent of the taxpayer's effort to assess the taxpayer's proper tax liability. Circumstances that may indicate good faith shall include an honest misunderstanding of fact or law that is reasonable in light of all the facts and circumstances, including the experience, knowledge, and education of the taxpayer. An isolated computational or transcriptional error generally is not inconsistent with good faith.

(3) In addition to the penalty imposed under paragraph (2) of this subsection, when all or part of the excessive amount of the taxpayer's claim for refund is based on a position which is knowingly and willfully advanced in bad faith and is patently improper, such taxpayer shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $1,000.00.

(d) Except as provided for in this subsection, for the purposes of all claims for refund of sales and use taxes erroneously or illegally assessed and collected, the term "taxpayer" as used in Code Section 48-2-35 shall mean a dealer as defined in Code Section 48-8-2 that collected and remitted erroneous or illegal sales and use taxes to the commissioner. A person that has erroneously or illegally paid sales taxes to a dealer that collected and remitted such taxes to the commissioner may file a claim for refund either initially with the commissioner or, alternatively, elect to seek a refund from the dealer, by submitting a written request for refund to the dealer, and file a claim for refund with the commissioner after being unable to obtain a refund from such dealer. Such person shall also be considered a taxpayer for purposes of filing a claim for refund with the commissioner under Code Section 48-2-35, but only if such person:

(1) When filing a refund claim initially with the commissioner, provides the department with a notarized form prescribed by the commissioner and executed by the dealer affirming that the dealer:

(A) Has not claimed or will not claim a refund of the same tax included in the person's request for refund;

(B) Will provide to the person any information or documentation in the dealer's possession needed for submission to the department to support or prove the claim for refund;

(C) Has remitted to the state the taxes being sought for refund; and

(D) Has not taken or will not take a credit for taxes being sought for refund; or

(2)(A) When filing a refund claim with the commissioner after being unable to obtain a refund from such dealer, such person provides a letter or other information as may be requested by the commissioner that either:

(i) The dealer refused or was unable to refund the erroneously or illegally assessed and collected taxes; or

(ii) The dealer did not act upon the person's written request for refund of the erroneously or illegally assessed and collected taxes within 90 days from the date of such request for refund.

(B) Upon acceptance of such letter or information by the commissioner, the dealer shall be deemed to have assigned all rights to the refund to such person. (Code 1981, § 48-2-35.1, enacted by Ga. L. 2004, p. 630, § 1; Ga. L. 2009, p. 813, § 1/HB 441; Ga. L. 2009, p. 816, § 4/HB 485; Ga. L. 2013, p. 677, § 1/SB 137.)

The 2013 amendment, effective May 6, 2013, substituted the present provisions of the introductory paragraph of subsection (d) for the former provisions, which read: "Except as provided for in this subsection, for the purposes of all claims for refund of sales and use taxes erroneously or illegally assessed and collected, the term 'taxpayer' as used in Code Section 48-2-35 shall mean a dealer as defined in Code Section 48-8-2 that collected and remitted erroneous or illegal sales and use taxes to the commissioner. A person that has erroneously or illegally paid sales taxes to a dealer that collected and remitted such taxes to the commissioner may elect to seek a refund from such dealer. Alternatively, such person may file a claim for refund either initially with the commissioner or with the commissioner after being unable to obtain a refund from such dealer and shall also be considered a taxpayer for purposes of filing a claim for refund under Code Section 48-2-35, but only if such person:".

JUDICIAL DECISIONS

Direct cause of action not permitted. — Since the plain language of O.C.G.A. § 48-2-35.1(d) provides that a person may seek a refund of erroneously paid sales tax from a dealer who collected and remitted the tax to the commissioner or directly from the commissioner, but does not mention a direct cause of action against the dealer, the customers were not authorized to bring a direct action for a refund of allegedly over-collected sales tax against the power company. Ga. Power Co. v. Cazier, 321 Ga. App. 576, 740 S.E.2d 458 (2013).

48-2-36. Extension of time for returns.

(a) The commissioner may grant, upon written request, a reasonable extension of time for filing returns, declarations, or other documents required under state revenue laws whenever, in the reasonable exercise of such commissioner's judgment, a good cause for the extension exists. The commissioner shall keep a record of every extension granted and the reason for the extension. No extension or extensions, except as otherwise expressly provided by law, shall aggregate more than six months, nor shall any extension of time for filing returns, except as otherwise expressly provided by law, operate to delay the payment of a tax unless a bond satisfactory to the commissioner is posted. In no event shall the commissioner extend the time of filing returns which are required to be filed with the tax receiver or tax commissioner.

(b) Notwithstanding any other provision in the laws of this state, in the case of a taxpayer determined by the commissioner to be affected by a presidentially declared disaster, as defined in Internal Revenue Code Section 1033(h)(3), or a terroristic or military action, as defined in Internal Revenue Code Section 692(c)(2), the commissioner may specify a period of up to one year that may be disregarded in determining, under the laws of this state, in respect of any tax liability, fee liability, or other liability of such taxpayer:

(1) Whether any of the actions described in subsection (c) of this Code section were performed within the time prescribed therefor, determined without regard to extension under any other provision of the laws of this state for periods after the date, as determined by the commissioner, of such disaster or action;

(2) The amount of any interest, penalty, or addition to the taxes, fees, or other liability for periods after the date, as determined by the commissioner, of such disaster or action; and

(3) The amount of any refund.

(c) Actions which may be extended:

(1) Filing any return of taxes, fees, or other liability;

(2) Payment of any taxes, fees, or other liability or any installment thereof;

(3) Filing a petition with the superior court, the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50, or the office of state administrative hearings as allowed under the laws of this state;

(4) Allowance of a refund of any taxes, fees, or other liability;

(5) Filing a claim for refund of any taxes, fees, or other liability;

(6) Bringing suit upon any such claim for refund;

(7) Assessment of any taxes, fees, or other liability;

(8) Giving or making any notice, assessment, or demand for the payment of any taxes, fees, or other liability;

(9) Collection, by the commissioner, by tax execution, or otherwise, of the amount of any liability of any taxes, fees, or other liability;

(10) Bringing suit by the department, or any officer on its behalf, in respect of any liability in respect of any taxes, fees, or other liability; and

(11) Any other action required or permitted under the laws administered by the commissioner. (Ga. L. 1937-38, Ex. Sess., p. 77, § 27; Code 1933, § 91A-234, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2006, p. 200, § 4/HB 1310; Ga. L. 2012, p. 318, § 3/HB 100.)

The 2012 amendment, effective January 1, 2013, inserted ", the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50," in paragraph (c)(3). See editor's note for applicability.

Editor's notes. — Ga. L. 2012, p. 318, § 16(b)/HB 100, not codified by the General Assembly, provides, in part, that: "Sections 1 through 14 of this Act shall become effective on January 1, 2013, provided that cases pending on January 1, 2013, shall continue to be governed by the law in effect on December 31, 2012, until the conclusion of the case."

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 70 (2012).

48-2-39. When date for payment or filing on holiday.

When the date prescribed by or imposed pursuant to law for the making of any return, the filing of any paper or document, or the payment of any tax or license fee pursuant to this title or any law relating to the taxation and licensing of automobiles, trucks, or trailers falls on a Saturday, Sunday, legal holiday, or day on which the Federal Reserve Bank is closed, the making of the return, the filing of the paper or document, or the payment of the tax or license fee shall be postponed by the person required to take such action until the first day following which is not a Saturday, Sunday, legal holiday, or day on which the Federal Reserve Bank is closed. (Code 1933, § 91A-236, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 712, § 1; Ga. L. 2015, p. 888, § 1/HB 234.)

The 2015 amendment, effective May 6, 2015, substituted "Sunday, legal holiday, or day on which the Federal Reserve Bank is closed" for "Sunday, or legal holiday" in the middle and at the end of this Code section.

48-2-44. (For effective date, see note.) Penalty and interest on failure to file return or pay revenue held in trust for state; penalty and interest on willful failure to pay ad valorem tax; distribution of penalties and interest.

(a) (For effective date, see note.) In any instance in which any person willfully fails to file a report, return, or other information required by law or willfully fails to pay the commissioner any revenue held in trust for the state, such person shall pay, in the absence of a specific statutory civil penalty for the failure, a penalty of 10 percent of the amount of revenue held in trust and not paid on or before the time prescribed by law, together with interest on the principal amount at the rate specified in Code Section 48-2-40 from the date the return should have been filed or the revenue held in trust should have been remitted until it is paid.

(b)(1) (For effective date, see note.) In any instance in which any person willfully fails, on or after July 1, 1981, to pay, within 90 days of the date when due, any ad valorem tax owed the state or any local government, such person shall pay, in the absence of a specific statutory civil penalty for the failure, a penalty of 10 percent of the amount of tax due and not paid at the time such penalty is assessed, together with interest as specified by law. This 10 percent penalty shall not, however, apply in the case of:

(A) Ad valorem taxes of $500.00 or less on homestead property as defined in Part 1 of Article 2 of Chapter 5 of this title; or

(B) With respect to tax year 1986 and future tax years, ad valorem taxes of any amount on homestead property as defined in Part 1 of Article 2 of Chapter 5 of this title, if the homestead property was during the tax year acquired by a new owner who did not receive a tax bill for the tax year and who immediately before acquiring the homestead property resided outside the State of Georgia and if the taxes are paid within one year following the due date.

(2) Any city or county authorized as of April 22, 1981, by statute or constitutional amendment to receive a penalty of greater than 10 percent for failure to pay an ad valorem tax is authorized to continue to receive that amount.

(3) With respect to all penalties and interest received by the tax commissioner on or after July 1, 1998, unless otherwise specifically provided for by general law, the tax commissioner shall distribute penalties collected and interest collected or earned as follows:

(A) Penalties collected for failure to return property for ad valorem taxation or for failure to pay ad valorem taxes, and interest earned by the tax commissioner on taxes collected but not

yet disbursed, shall be paid into the county treasury in the same manner and at the same time the tax is collected and distributed to the county, and they shall remain the property of the county; and

(B) Interest collected on delinquent ad valorem taxes shall be distributed pro rata based on each taxing jurisdiction's share of the total tax on which the interest was computed. (Ga. L. 1937-38, Ex. Sess., p. 77, § 38; Code 1933, § 91A-239.1, enacted by Ga. L. 1979, p. 5, § 10; Ga. L. 1980, p. 10, § 3; Ga. L. 1981, p. 1857, § 5; Ga. L. 1986, p. 1322, § 1; Ga. L. 1998, p. 1120, § 1; Ga. L. 1999, p. 81, § 48; Ga. L. 2015, p. 1219, § 4/HB 202.)

Delayed effective date. — Subsection (a) and paragraph (b)(1), as set out above, become effective January 1, 2016. For versions of subsection (a) and paragraph (b)(1) in effect until January 1, 2016, see the 2015 amendment note.

The 2015 amendment, effective January 1, 2016, substituted "such person shall pay" for "he shall pay" in subsection (a) and the introductory language of paragraph (b)(1); and substituted "at the time such penalty is assessed" for "on or before the time prescribed by law" in the first sentence of the introductory language of paragraph (b)(1).

48-2-50. Review of assessments; certifications.

(a) The commissioner's assessments shall not be reviewed except by the procedure provided in this chapter or Chapter 13A of Title 50. No trial court shall have jurisdiction of proceedings to question the assessments, except as provided in this chapter or Chapter 13A of Title 50.

(b) When the commissioner is required by law to certify to any county or municipal government of this state all or any part of an assessment or tax against any taxpayer and the taxpayer disputes the correctness of the assessment or tax as determined by the commissioner, the commissioner is directed to certify to the county and municipal government the value of the property of the taxpayer or the tax admitted by him in his return to be due, or both such value and such tax due. After a final determination of the balance of the assessment or tax in dispute, the commissioner shall make a supplemental certification to the county and municipal government of the amount of the balance of the assessment or tax as finally determined. It shall be the duty of the taxpayer to pay as required by law any taxes assessed by the state, county, or municipal governments, both upon the original value as shown in his return and upon the supplemental value determined as provided in this chapter. (Ga. L. 1937-38, Ex. Sess., p. 77, § 44; Ga. L. 1943, p. 204, § 2; Code 1933, § 91A-254, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2012, p. 318, § 4/HB 100.)

The 2012 amendment, effective January 1, 2013, in subsection (a), added "or Chapter 13A of Title 50" at the end of the first and second sentences. See editor's note for applicability.

Editor's notes. — Ga. L. 2012, p. 318, § 16(b)/HB 100, not codified by the General Assembly, provides that: "Sections 1 through 14 of this Act shall become effective on January 1, 2013, provided that cases pending on January 1, 2013, shall continue to be governed by the law in effect on December 31, 2012, until the conclusion of the case."

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 70 (2012).

48-2-52. Personal liability of corporate officer or employee for tax delinquency.

JUDICIAL DECISIONS

Right to recoup taxes forfeited. — Superior court did not err in reversing the decision of the Georgia Department of Revenue that a corporate officer was liable for a restaurant's sales and use taxes pursuant to O.C.G.A. § 48-2-52 because the release of and refund payment to the majority owner of the restaurant operated as a release of the officer; under O.C.G.A. § 13-1-13, by voluntarily paying the owner a settlement amount with full awareness of any potential joint claim the department had against the officer, the department forfeited any right the department had to recoup from the officer the payment the department made to the owner. Ga. Dep't of Revenue v. Moore, 317 Ga. App. 31, 730 S.E.2d 671 (2012).

Finding as to whether second responsible party was necessary in refund action was required. — In an assessment action under O.C.G.A. § 48-2-52, the Georgia Court of Appeals erred by concluding that because the Georgia Department of Revenue voluntarily refunded a tax payment made by a majority owner of a restaurant, the department could not seek payment from a second responsible party as the voluntary payment doctrine applied to contracts, not tax indebtedness; it was necessary to remand the case to see if the second responsible party was a necessary party to the majority owner's refund action. Ga. Dep't of Revenue v. Moore, 294 Ga. 20, 751 S.E.2d 57 (2013).

48-2-55. Attachment and garnishment; levy.

(a) All taxes are a personal debt of the person required by this title to file the returns or to pay the taxes imposed by this title.

(b)(1) The commissioner or his authorized representative may attach the property of a delinquent taxpayer on any ground provided by Code Section 18-3-1 or on the ground that the taxpayer is liquidating his property in an effort to avoid payment of the tax.

(2) The commissioner or the commissioner's authorized representative may use garnishment to collect any tax, fee, license, penalty, interest, or collection costs due the state which are imposed by this title or which the commissioner or the department is responsible for collecting under any other law. Garnishment may be issued by the commissioner or the commissioner's authorized representative against any person whom the commissioner believes to be indebted to the defendant or who has property, money, or effects in such person's

hands belonging to the defendant. The summons of garnishment shall be served by the commissioner or the commissioner's authorized representative, shall be served at least 15 days before the sitting of the court to which the summons is made returnable, and shall be returned to either the superior court or the state court of the county in which the garnishee is served. The commissioner or the commissioner's authorized representative shall enter on the execution the names of the persons garnished and shall return the execution to the appropriate court. All subsequent proceedings shall be the same as provided by law regarding garnishments in other cases when judgment has been obtained or execution issued. In addition to any other methods of service, the summons of garnishment may be served by the commissioner or the commissioner's authorized representative to the garnishee by registered or certified mail or statutory overnight delivery, return receipt requested. Either the return receipt indicating receipt by the garnishee or the envelope bearing the official notification from the United States Postal Service of the garnishee's refusal to accept delivery of such registered or certified mail or statutory overnight delivery shall be filed with the clerk of the court in which the garnishment is pending. If statutory overnight delivery was accomplished through a commercial firm as provided under paragraph (1) of subsection (b) of Code Section 9-10-12, the return receipt indicating receipt by the garnishee or the envelope bearing the official notification of such commercial firm of the garnishee's refusal to accept delivery shall be filed with the clerk of the court in which garnishment is pending. If a garnishee refuses to accept service of a summons of garnishment by registered or certified mail or statutory overnight delivery, the summons of garnishment shall be served by the commissioner or the commissioner's authorized representative under any other method of lawful service and the garnishee shall be personally liable to the commissioner for a sum equal to the actual costs incurred to serve the summons of garnishment. This liability shall be paid upon notice and demand by the commissioner or the commissioner's delegate and shall be assessed and collected in the same manner as other taxes administered by the commissioner.

(c)(1) In case of neglect or refusal by a taxpayer to pay any taxes, fees, licenses, penalties, interest, or collection costs due the state, the commissioner or his authorized representative may levy upon all property and rights to property belonging to the taxpayer, except such as are exempt by law, for the payment of the amount due, together with interest on the amount, any penalty for nonpayment, and such further amount as shall be sufficient for the fees, costs, and expenses of the levy. As used in this subsection, the term "property and rights to property" includes, but is not limited to, any account in or with a financial institution.

(2) A levy upon an account in or with a financial institution shall be a constructive levy and shall be effective at the time of personal service upon the financial institution as evidenced by an entry of service upon the levy by the commissioner or his authorized representative, or by an acknowledgment of service made by a proper official of the financial institution indicating the date and time of service. The commissioner or his authorized representative may, in lieu of personal service or service by mail, serve a levy upon a financial institution, and a financial institution may acknowledge service of a levy by telephonic facsimile transmission or by other means of instantaneous electronic transmission. The financial institution shall remit to the commissioner or his authorized representative as provided in this subsection not later than 15 days after personal service or acknowledgment of service by mail or facsimile or other instantaneous electronic transmission. Notwithstanding any other law to the contrary, a financial institution receiving a levy shall remit the full amount of its depositor's accounts that are subject to levy, to the extent of the amount claimed upon the levy, without deduction; provided, however, nothing contained in this subsection shall be deemed to diminish the right of a financial institution to exercise its right of setoff.

(d)(1) The commissioner or his or her authorized representative may levy and conduct judicial sales in the manner provided by law for sales by sheriffs and constables.

(2)(A) In the event the levy is upon personal property, the sale of such property shall be advertised ten days before the date of sale. Advertisements of sales shall designate the time, place, and manner of the sale, shall give a reasonable description of the property to be sold, shall be posted in three public places in the county, and shall be inserted at least one time in the newspaper in which sheriff's sales in the county are advertised. The commissioner may prescribe by regulation methods for providing notice of sale in addition to the provisions of this subparagraph.

(B) The commissioner or his or her authorized representative may conduct the sale of such personal property via public auction, public Internet auction, or via sealed bids. If the sale is conducted via public auction, the sale shall be held between the hours of 10:00 A.M. and 4:00 P.M. eastern standard time or eastern daylight time, whichever is applicable. The sale shall be conducted within the county in which the property levied on is situated, except that if it appears to the commissioner that substantially higher bids may be obtained for the property if the sale is held at a place outside such county, he may order that the sale be held in such other place. If the location of the sale is in a county other than the county in which the

levy was made, notice of the sale as required by this Code section shall be made in both counties. The commissioner may prescribe by regulation the manner or other conditions for sales by public auction, public Internet auction, or sealed bids, including whether payment in full is required at the time of acceptance of the bid, under what circumstances the sale may be adjourned, and whether, and under what circumstances, multiple items of property may be sold separately, in groups, or in the aggregate.

(C) For each sale of personal property conducted pursuant to this paragraph, the commissioner or his or her authorized representative shall determine a minimum bid price of the sale, and, in the absence of a bid equal to or greater than the minimum bid price, the commissioner shall retain possession of the property. In determining the minimum bid price, the commissioner or his or her authorized representative shall take into account the expense of making the levy and sale. In his discretion, the commissioner or his or her representative may delay disclosure of the minimum bid price until the receipt of the highest bid.

(3) In the event the levy is upon real property, the commissioner or his or her authorized representative, after making the levy, shall return the levy on the execution to the sheriff of the county in which the property is located. After the return, the sheriff shall proceed to advertise and sell the property as required by law.

(e) The department shall apply all moneys obtained under this Code section first against the expenses of the proceedings and then against the liability in respect to which the levy was made and any other liability owed to the department by the delinquent taxpayer.

(f)(1) Any person in possession of or obligated with respect to property or rights to property subject to levy upon which a levy has been made shall surrender such property or rights or discharge such obligation to the commissioner or his authorized representative, except such part of the property or rights as is subject, at the time of such levy, to an attachment or execution under any judicial process.

(2) Any person who willfully fails or refuses to surrender any property subject to levy shall be personally liable to the commissioner for a sum equal to the value of the property or rights not so surrendered but not exceeding the amount of the tax, interest, and penalties for the collection of which such levy has been made, together with costs and interest at the rate specified in Code Section 48-2-40 from the date of such levy. The liability imposed in this subsection shall be paid upon notice and demand by the commissioner or his delegate and shall be assessed and collected in the same manner as other taxes administered by the commissioner. Any

amount other than costs recovered under this subsection shall be credited against the subject taxpayer's liability for the collection of which such levy was made.

(3) Any person in possession of or obligated with respect to property or rights to property subject to levy upon which a levy has been made who, upon service of levy by the commissioner or his authorized representative, surrenders such property or rights to property or discharges such obligation to the commissioner or his authorized representative shall be discharged from any obligation or liability to the delinquent taxpayer with respect to such property or rights to property arising from such surrender or payment. (Ga. L. 1931, Ex. Sess., p. 24, § 44; Code 1933, § 92-3311; Ga. L. 1937-38, Ex. Sess., p. 77, § 41; Ga. L. 1951, p. 614, § 3; Ga. L. 1952, p. 300, § 1; Code 1933, § 91A-250, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 12; Ga. L. 1981, p. 1857, § 8; Ga. L. 1983, p. 1834, § 3; Ga. L. 1985, p. 931, § 1; Ga. L. 1990, p. 1875, § 1; Ga. L. 1991, p. 713, § 1; Ga. L. 1993, p. 961, §§ 3, 4; Ga. L. 2009, p. 816, § 5/HB 485; Ga. L. 2012, p. 735, § 2/HB 846.)

The 2012 amendment, effective May 1, 2012, rewrote subsection (d).

JUDICIAL DECISIONS

Claim in bankruptcy. — Chapter 13 debtor was liable for property taxes assessed against the property despite the fact that the debtor's lender was granted relief from stay. Under O.C.G.A. §§ 48-2-55 and 48-5-10, the debtor remained personally liable for the taxes because the debtor was the title holder of the property on the first day of each tax year for which an unsecured priority claim was made. Waddy v. Fulton County Tax Comm'r (In re Waddy), No. 09-64634-WLH, 2010 Bankr. LEXIS 4003 (Bankr. N.D. Ga. Sept. 23, 2010).

48-2-59. Appeals; payment of taxes admittedly owed; bond; costs.

(a) Except with respect to claims for refunds, either party may appeal from any order, ruling, or finding of the commissioner to the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50 or the superior court of the county of the residence of the taxpayer, except that:

(1) If the taxpayer is a public utility or nonresident, the appeal of either party shall be to the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50 or the superior court of the county in which is located the taxpayer's principal place of doing business or in which the taxpayer's chief or highest corporate officer residing in this state maintains such officer's office; or

(2) If the taxpayer is a nonresident individual or a foreign corporation having no place of doing business and no officer or employee residing and maintaining such officer's office in this state, the taxpayer shall have the right to appeal to the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50 or the Superior Court of Fulton County or to the superior court of the county in which the commissioner in office at the time the action is filed resides.

(b) The taxpayer shall commence an appeal by filing a petition with the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50 or the superior court within 30 days from the date of decision by the commissioner.

(c) Before the superior court shall have jurisdiction to entertain an appeal filed by any aggrieved taxpayer, the taxpayer shall file with the clerk of the superior court a written statement whereby the taxpayer agrees to pay on the date or dates the taxes become due all taxes for which the taxpayer has admitted liability. Additionally, the taxpayer shall file with the clerk of the superior court within 30 days from the date of decision by the commissioner, except when the value of the appellant's title or interest in real property owned in this state is in excess of the amount of the tax in dispute, a surety bond or other security in an amount satisfactory to the clerk, conditioned to pay any tax over and above that for which the taxpayer has admitted liability and which is found to be due by a final judgment of the court, together with interest and costs. It shall be ground for dismissal of the appeal if the taxpayer fails to pay all taxes admittedly owed upon the due date or dates as provided by law. This subsection shall not apply to appeals filed with the Georgia Tax Tribunal as provided in Chapter 13A of Title 50.

(d)(1) If the final judgment of the court places upon the taxpayer any tax liability which has not already been paid and if the tax or any part of the tax has:

(A) Not become due on the date of the final judgment of the court, then the taxpayer shall pay the amount of the unpaid tax liability on the due date or dates as provided by law; or

(B) Already become due at the time of final judgment of the court, the taxpayer shall immediately pay the tax or as much of the tax as has already become due, with interest.

(2) In the event the final judgment of the court is adverse to the taxpayer, the taxpayer shall pay the court costs regardless of whether the tax or any part of the tax has or has not become due at the time of the final judgment of the court.

(3) This subsection shall not apply to appeals filed with the Georgia Tax Tribunal as provided in Chapter 13A of Title 50. (Ga. L.

1937-38, Ex. Sess., p. 77, § 45; Ga. L. 1943, p. 204, § 3; Code 1933, § 91A-255, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 15; Ga. L. 1991, p. 716, § 1; Ga. L. 2012, p. 318, § 5/HB 100.)

The 2012 amendment, effective January 1, 2013, inserted "Georgia Tax Tribunal in accordance with Chapter 13A of Title 50 or the" throughout subsection (a); substituted "such officer's office" for "his office" in paragraphs (a)(1) and (a)(2); substituted the present provisions of subsection (b) for the former provisions, which read: "The appeal and necessary records shall be certified by the commissioner and shall be filed with the clerk of the superior court within 30 days from the date of decision by the commissioner. The procedure provided by law for applying for and granting appeals from the probate court to the superior court shall apply as far as suitable to the appeal authorized by this Code section, except that the appeal authorized by this Code section may be filed within 30 days from the date of decision by the commissioner."; in subsection (c), substituted "except when" for "except where" near the middle of the second sentence and added the last sentence; substituted "the taxpayer shall" for "he shall" in paragraph (d)(2); and added paragraph (d)(3). See editor's note for applicability.

Editor's notes. — Ga. L. 2012, p. 318, § 16(b)/HB 100, not codified by the General Assembly, provides that: "Sections 1 through 14 of this Act shall become effective on January 1, 2013, provided that cases pending on January 1, 2013, shall continue to be governed by the law in effect on December 31, 2012, until the conclusion of the case."

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 70 (2012).

RESEARCH REFERENCES

ALR. — What constitutes plain, speedy, and efficient state remedy under Tax Injunction Act (28 USCS § 1341), prohibiting federal district courts from interfering with assessment, levy, or collection of state business taxes, 31 ALR Fed. 2d 237.

ARTICLE 4

FACILITATING BUSINESS RAPID RESPONSE TO STATE DECLARED DISASTERS

Effective date. — This article became effective July 1, 2014.

Editor's notes. — The former article, consisting of Code Sections 48-2-100 through 48-2-108, relating to "The Federal Retiree Refund Act of 1995," was based on Ga. L. 1995, p. 1, § 1; Ga. L. 1999, p. 81, § 48, and was repealed by Ga. L. 1995, p. 1, § 1, effective December 31, 1999.

48-2-100. Short title; definitions; legislative findings; certain exemptions for out-of-state businesses and employees conducting operations related to declared state of emergency; post-emergency application of state laws and requirements.

(a) This Code section shall be known and may be cited as the "Facilitating Business Rapid Response to State Declared Disasters Act of 2014."

(b) For purposes of this Code section, the term:

(1) "Affected state" means a state where a declared state of disaster or emergency exists.

(2) "'Declared state of disaster or emergency" means a disaster or emergency event for which the Governor's state of emergency declaration has been issued or for which a presidential declaration of a federal major disaster or emergency has been issued.

(3) "Disaster or emergency period" means a period that begins ten days prior to the first day of the Governor's declaration or the president's declaration, whichever occurs first, and extends for a period of 60 calendar days after the end of the declared disaster or emergency period.

(4) "Infrastructure" means property and equipment owned or used by communications networks; cable, video, or broadband networks; gas and electric distribution systems; water pipelines; railways; public roads and bridges; and related support facilities that service multiple customers, including but not limited to real and personal property such as buildings, offices, lines, poles, pipes, structures, and equipment.

(5) "Out-of-state business" means a business entity that has no presence in this state and conducts no business in this state whose services are requested by a registered business in this state or by the state or a local government in this state for purposes of performing disaster or emergency related work in this state. This shall also include a business entity that is affiliated with a registered business in this state solely through common ownership if the affiliate has no registrations or required registrations or tax filings or required tax filings or nexus in this state prior to the declared state of disaster or emergency.

(6) "Out-of-state employee" means an employee who does not work in this state that is temporarily working in this state during the disaster or emergency period to perform disaster or emergency related work in this state to repair, renovate, install, build, or render services or other business activities that relate to infrastructure that has been damaged or destroyed during a declared state of disaster or emergency.

(7) "Registered business" means a business entity that owns or operates infrastructure in this state and is currently registered or is required to be registered to do business in this state prior to the declared state of disaster or emergency.

(c) The General Assembly finds that:

(1) When storms, floods, fires, earthquakes, hurricanes, or other natural disasters or emergencies occur, many businesses assign

resources and personnel to the affected state from other states throughout the United States on a temporary basis to expedite the enormous and overwhelming task of cleaning, restoring, and repairing damaged equipment, property, and infrastructure.

(2) Most often this disaster or emergency relief effort involves the need for out-of-state businesses, including out-of-state affiliates of businesses registered in the affected state, to bring in resources, property, and personnel to perform disaster related activity in the affected state. In some instances, personnel may be located in the affected state for extended periods of time to perform such activities.

(3) During such time of operating in the affected state on a temporary basis solely for purposes of helping the affected state recover from the disaster or emergency, these businesses and employees should not be burdened by any requirements for certain tax liabilities incurred as a result of such activities in the affected state for a temporary period.

(4) The affected state's nexus and residency thresholds for tax liability are intended for businesses and individuals in such state conducting business operations or who intend to reside in the state and should not be applied to businesses and individuals coming into the state on a temporary basis to provide help and assistance in response to a declared state of disaster or emergency.

(5) To ensure that businesses and individuals focus on quick response to the needs of this state and its citizens during a declared state of disaster or emergency, it is appropriate for the General Assembly to deem that such disaster or emergency relief activity for a reasonable period of time during and after the disaster or emergency period shall not establish any liability for purposes of certain state and local taxes, licensing, and regulatory requirements imposed in this state.

(d)(1) An out-of-state business whose presence is solely that of conducting operations within this state for purposes of performing work or services on infrastructure related to a declared state of disaster or emergency during the disaster or emergency period shall not be considered to have established a level of presence that would require that business to register, file, and remit certain state or local taxes or that would require that business to be subject to any licensing or registration requirements in this state. This exemption includes any state or local business licensing or registration requirements, any state or local employer income tax withholding, unemployment insurance, any state or local occupational licensing fees, public service commission or secretary of state licensing and regulatory requirements, and any state or local tax on or measured by, in

whole or in part, net or gross income or receipts or net worth, including the filing required for a combined group of which the out-of-state business may be a part. For the apportionment of income pursuant to Chapter 7 of this title, the performance by an out-of-state business of any work in accordance with this Code section shall not increase the amount of income apportioned to this state.

(2) Any out-of-state employee shall not be considered to have established residency or a presence in this state that would require that employee to file and pay income taxes, to be subjected to income tax withholdings, or to be subject to any licensing or registration requirements in this state.

(e) Out-of-state businesses and out-of-state employees shall be required to pay transaction taxes and fees including but not limited to fuel taxes or sales and use taxes on materials or services subject to sales and use taxes in this state, hotel taxes, and car rental taxes or fees that the out-of-state business or out-of-state employee purchases for use or consumption in the affected state during the disaster or emergency period, unless such taxes are otherwise exempted pursuant to Chapter 8 of this title.

(f) Any out-of-state business or out-of-state employee that remains in this state after the disaster or emergency period shall become subject to the state's normal requirements for establishing presence, residency, or doing business and shall comply with all state and local registration, licensing, and filing requirements.

(g)(1) Any out-of-state business that enters this state to perform qualified work during a disaster or emergency period shall provide to the department and to the Georgia Emergency Management Agency a statement that it is in this state for purposes of responding to the disaster or emergency, which statement shall include the business' name, state of domicile, principal business address, federal tax identification number, date of entry, and contact information.

(2) A registered business in this state shall provide the information required in paragraph (1) of this subsection to the department and to the Georgia Emergency Management Agency for any affiliate that enters this state that is an out-of-state business. The notification shall also include contact information for the registered business in this state.

(h) The Georgia Emergency Management Agency and the department shall promulgate regulations as necessary to comply with the requirements of this Code section. (Code 1981, § 48-2-100, enacted by Ga. L. 2014, p. 201, § 1/HB 782.)

CHAPTER 3

TAX EXECUTIONS

48-3-1. Execution for collection of money due the state; affidavit of illegality.

The commissioner may issue an execution for the collection of any tax, fee, license, penalty, interest, or collection costs due the state. The execution shall be directed to all and singular sheriffs of this state or to the commissioner or the commissioner's authorized representatives and shall command them to levy upon the goods, chattels, lands, and tenements of the taxpayer, provided that the commissioner may transmit such executions electronically. Each sheriff shall execute the execution as in cases of writs of execution from the superior courts. Whenever any writ of execution has been issued by the commissioner, the taxpayer, in order to obtain a determination of whether the tax is legally due, may tender to the levying officer such taxpayer's affidavit of illegality to the execution and, upon such taxpayer's payment of the tax if required as a condition precedent by the law levying the tax or upon such taxpayer's giving a good and solvent bond in such an amount to cover the total of any adverse judgment plus costs when the law does not require the payment of the tax as a condition precedent, the levying officer shall return the affidavit of illegality, except as otherwise provided by law, to the superior court of the county of the taxpayer's residence. The affidavit of illegality shall be summarily heard and determined by the court. Whenever any writ of execution has been issued by the commissioner for the collection of any tax, or any penalty, interest, or collection costs imposed with respect to any tax, the taxpayer may file a petition in the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50 to obtain a determination of whether any such amounts are legally due. (Ga. L. 1889, p. 29, § 7; Civil Code 1895, § 789; Civil Code 1910, § 1041; Ga. L. 1916, p. 34, § 1; Ga. L. 1927, p. 136, § 1; Ga. L. 1931, p. 7, § 80; Ga. L. 1931, Ex. Sess., p. 24, § 39; Code 1933, §§ 92-2706, 92-3306, 92-7301; Ga. L. 1937, p. 109, § 19; Ga. L. 1951, p. 360, § 19; Ga. L. 1952, p. 334, § 2; Code 1933, § 91A-301, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 1834, § 5; Ga. L. 1997, p. 734, § 3; Ga. L. 2012, p. 318, § 6/HB 100.)

The 2012 amendment, effective January 1, 2013, substituted "the commissioner's authorized" for "his authorized" in the second sentence; in the fourth sentence, substituted "such taxpayer's" for "his" throughout and substituted "plus costs when" for "plus costs where" in the middle, and added the last sentence. See editor's note for applicability.

Editor's notes. — Ga. L. 2012, p. 318, § 16(b)/HB 100, not codified by the General Assembly, provides that: "Sections 1 through 14 of this Act shall become effective on January 1, 2013, provided that cases pending on January 1, 2013, shall continue to be governed by the law in effect on December 31, 2012, until the conclusion of the case."

48-3-3. (For effective date, see note.) Executions by tax collectors and commissioners.

(a) As used in this Code section, the term:

(1) "New owner" means the most recent subsequent owner who has purchased such property during the year after January 1, but on or after the due date of that tax bill year and whose deed has been duly recorded in the records of the clerk of the superior court for that county.

(2) "Owner of record" means the owner whose name appears in the deed record as the owner as of January 1 of that tax bill year.

(b) The tax collector or tax commissioner shall issue executions for nonpayment of taxes collectable by the tax collector or tax commissioner at any time after 30 days have elapsed since giving notice as provided in subsection (c) of this Code section. The executions shall be directed to all and singular sheriffs and constables of the state.

(c) As soon as the last day for the payment of taxes has arrived, the tax collector or tax commissioner shall notify in writing the taxpayer of the fact that the taxes have not been paid and that, unless paid, an execution shall be issued; provided, however, that notice shall not be required for taxes due on personal property and executions may be issued on the day next following the day when taxes are due.

(d) No execution shall be issued against any person who is not the record owner of the property on the day that the taxes become delinquent if, within 90 days from the due date, that person has provided satisfactory proof to the tax collector or tax commissioner that the property has been transferred by recorded deed and the liability for the payment of ad valorem taxes has been assigned to the vested transferee by written agreement or contract. In such cases, the execution shall be issued against the person who is the new record owner of the property on the date that taxes became delinquent only after such new owner has been sent a notice of the delinquent tax bill and that the tax collector or tax commissioner intends to issue a tax execution in the new owner's name against such delinquent property if the bill and all applicable interest and other charges are not paid within 30 days of the

date of the notice. Such notice shall be mailed first class to the address of record as shown on the real estate transfer tax declaration form in the records of the clerk of the superior court and to the address shown on the closing documents if presented or to the property location if the address differs from that shown on the real estate transfer tax declaration form. If an execution has already been issued against the owner of record, such execution shall be affirmatively cleared and vacated of record by the tax collector or tax commissioner upon receiving satisfactory proof as provided in this subsection.

(e)(1)(A) (For effective date, see note.) Whenever technologically feasible, the tax collector or tax commissioner, at the time tax bills or any subsequent delinquent notices are mailed, shall also mail such bills or notices to any new owner that at that time appear in the records of the county board of tax assessors. The bills or notices shall be mailed to the address of record as found in the county board of tax assessors' records.

(B)(i) In the discretion of the tax commissioner, a taxpayer shall have the option of receiving tax bills or subsequent delinquent notices via electronic transmission in lieu of, or in addition to, receiving a paper bill via first-class mail. The tax bill shall be transmitted to the taxpayer via e-mail, with delivery or read receipt requested, in portable document format using all e-mail addresses provided by the taxpayer, and the date shown on such transmission shall serve as a postmark. In any instance where such transmission proves undeliverable, the tax commissioner shall mail such tax bill or subsequent delinquent notice to the address of record as found in the county board of tax assessors' records.

(ii) The commissioner shall develop and make available to tax commissioners a suitable form for use by taxpayers in exercising the option to receive tax bills or subsequent delinquent notices via electronic transmission.

(2) A new owner shall not be required to pay the interest specified in Code Section 48-2-40, or the penalty specified in Code Section 48-2-44, until 60 days after the tax collector or tax commissioner has forwarded a tax bill to the new owner in accordance with paragraph (1) of this subsection. This paragraph shall apply only to the tax bill applicable to the year in which the property was purchased.

(f) The real estate transfer tax declaration form shall provide for and indicate the correct tax map parcel identification number before being accepted by the clerk of the superior court for recordation. (Orig. Code 1863, § 810; Code 1868, § 889; Code 1873, § 886; Code 1882, § 886; Civil Code 1895, § 894; Civil Code 1910, § 1151; Code 1933, § 92-7401;

Code 1933, § 91A-307, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1988, p. 1363, § 1; Ga. L. 1990, p. 1337, § 1; Ga. L. 1994, p. 358, § 1; Ga. L. 2005, p. 138, § 2/HB 116; Ga. L. 2006, p. 72, § 48/SB 465; Ga. L. 2006, p. 739, § 1/SB 525; Ga. L. 2007, p. 172, § 1/HB 380; Ga. L. 2010, p. 878, § 48/HB 1387; Ga. L. 2015, p. 1219, § 5/HB 202.)

Delayed effective date. — Subsection (e), as set out above, becomes effective January 1, 2016. For version of subsection (e) in effect until January 1, 2016, see the 2015 amendment note.

The 2015 amendment, effective January 1, 2016, substituted the present provisions of subsection (e) for the former provisions, which read: "(e)(1) Whenever technologically feasible, the tax collector or tax commissioner, at the time tax bills or any subsequent delinquent notices are mailed, shall also mail such bills or notices to any new owner that at that time appear in the records of the county board of assessors. The bills or notices shall be mailed to the address of record as found in the county board of assessors' records.

"(2) A new purchaser of property shall not be required to pay the interest specified in Code Section 48-2-40, or the penalty specified in Code Section 48-2-44, until 60 days after the tax collector or tax commissioner has forwarded a tax bill to the new purchaser in accordance with paragraph (1) of this subsection. This paragraph shall apply only to the tax bill applicable to the year in which the property was purchased."

48-3-7. Issuance of alias tax execution to replace lost original; conversion of executions into electronic form.

(a) Except as provided in subsection (b) of this Code section, when a properly issued tax execution is lost or destroyed, an alias tax execution may be issued upon the filing by the party having the right to control the original execution of a statement under oath of the loss or destruction of such original execution with the judge of the probate court of the county in which the original execution was issued. The judge shall endorse the word "alias" on the alias tax execution. The alias tax execution shall have all the legal force and effect of the lost or destroyed original tax execution.

(b) When a tax execution which was regularly issued by an officer of the state as authorized by law is lost or destroyed, the state officer or the successor to the state officer by whom the same was issued may at any time issue an alias tax execution in lieu of the lost original tax execution. The alias tax execution shall be dated the same date as the original tax execution and the officer shall endorse the word "alias" on the alias tax execution. The alias tax execution shall have all the legal force and effect of the lost or destroyed original tax execution.

(c) The commissioner or his or her duly appointed representative shall be authorized to convert regularly issued original or alias tax executions into electronic form for indexing, storage, archival, retrieval, or transmittal purposes, and any tax execution so converted, whether or not subsequently reduced to paper or other tangible medium, shall be treated as a regularly issued original for all purposes, and the commis-

sioner shall not thereafter be required to maintain an original of such tax execution. Tax executions so converted, when reduced to paper or other tangible medium, shall fully reflect any and all entries or notations made on such tax executions. (Laws 1804, Cobb's 1851 Digest, p. 1059; Ga. L. 1857, p. 104, §§ 47, 48; Code 1863, §§ 3892, 3895; Code 1868, §§ 3912, 3915; Code 1873, §§ 3988, 3991; Code 1882, §§ 3988, 3991; Ga. L. 1882-83, p. 108, §§ 1, 2; Civil Code 1895, §§ 892, 893; Ga. L. 1904, p. 55, § 1; Civil Code 1910, §§ 1149, 1150; Code 1933, § 92-7407; Code 1933, § 91A-311, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1985, p. 1243, § 3; Ga. L. 2012, p. 735, § 3/HB 846.)

The 2012 amendment, effective May 1, 2012, added subsection (c).

48-3-19. Transfer of executions.

Law reviews. — For comment, "Making Debt Pay: Examining the Use of Property Tax Delinquency as a Revenue Source," see 62 Emory L.J. 217 (2012).

48-3-27. (For effective date, see note.) Obstructing levying officers; penalty.

(a) (For effective date, see note.) It is unlawful for any person knowingly and willfully to obstruct or hinder:

(1) The commissioner or his or her authorized representatives in the levy of a state tax execution; or

(2) Any sheriff, ex officio sheriff, tax commissioner, or municipal levy officer in the levy of a state, county, or municipal tax execution.

(b) Any person who violates this Code section shall be guilty of a misdemeanor. (Code 1933, § 91A-9905.1, enacted by Ga. L. 1981, p. 1857, § 45; Ga. L. 2015, p. 1219, § 6/HB 202.)

Delayed effective date. — Subsection (a), as set out above, becomes effective January 1, 2016. For version of subsection (a) in effect until January 1, 2016, see the 2015 amendment note.

The 2015 amendment, effective January 1, 2016, substituted the present provisions of subsection (a) for the former provisions, which read: "It is unlawful for any person knowingly and willfully to obstruct or hinder the commissioner or his authorized representatives in the levy of a state tax execution."

CHAPTER 4

TAX SALES

Article 4

Land Bank Authorities

Sec.

Article 6

Land Banks

ARTICLE 1

SALES UNDER TAX EXECUTIONS

48-4-5. Payment of excess.

Law reviews. — For annual survey on real property, see 65 Mercer L. Rev. 233 (2013).

JUDICIAL DECISIONS

Tax deed purchaser responsible for taxes after tax sale. — Tax deed purchaser, not the church, a defendant in fi. fa., was obligated to pay ad valorem taxes that accrued after the tax sale and before redemption, and the tax commissioner could not use the excess funds to satisfy the buyer's tax obligation that occurred after the tax sale. Iglesia Del Dios Vivo Columna Y Apoyo De La Verdad La Luz Del Mundo, Inc. v. Downing, 321 Ga. App. 778, 742 S.E.2d 742 (2013).

No right to excess funds generated by tax sale. — Trial court did not err in granting a tax commissioner summary judgment in a lienholder's action under O.C.G.A. § 15-13-3 to recover excess funds from a tax sale because at the time of the tax sale, at the time the tax commissioner notified the record owner of the property and record lienholders of the excess tax sale funds, and at the time the tax commissioner paid the excess tax sale funds to the record owner of the property, the lienholder had no recorded lien or interest in the property; after the tax commissioner fulfilled the obligation under O.C.G.A. § 48-4-5(a) to give notice to the record property owner and lienholders, the property owner submitted the only claim to the tax commissioner for the excess tax sale funds, and the lienholder failed to show that more was required of the tax commissioner before the funds were disbursed. Brina Bay Holdings, LLC v. Echols, 314 Ga. App. 242, 723 S.E.2d 533 (2012).

Recovery of excess proceeds from tax commissioner. — Holding company was entitled to recover from the tax commissioner the amounts necessary to pay the tax executions from the excess proceeds of the tax sales before any payments to the owners of record at the time of the tax sale. As the holder of the tax liens, the holding company had the right to be paid "before any other debt, lien, or claim of any kind" could be claimed by the parties entitled to receive them, including those who hold other liens against the property. Scott v. Vesta Holdings I, LLC, 275 Ga. App. 196, 620 S.E.2d 447 (2005).

County's immunity from suit. — Pursuant to O.C.G.A. § 36-1-4 and Ga. Const. 1983, Art. I, Sec. II, Para. IX(e), a county was immune from a lender's suit because the lender pointed to no statute creating a waiver of immunity or any factual scenario warranting a waiver with respect to the lender's claim that the county failed to give it notice of the availability of excess funds following a tax sale as required by O.C.G.A. § 48-4-5. Bartow County v. S. Dev., III, L.P., 325 Ga. App. 879, 756 S.E.2d 11 (2014).

ARTICLE 3

REDEMPTION OF PROPERTY SOLD FOR TAXES

48-4-40. Persons entitled to redeem land sold under tax execution; payment; time.

JUDICIAL DECISIONS

ANALYSIS

Redemption Period

Interest acquired following redemption date. — Oral agreement to buy a homeowner's association's lien and indebtedness against real property was required to be in writing and signed by the party to be charged pursuant to O.C.G.A. § 13-5-30(4); because the buyer did not acquire an interest in the property until after the date of redemption, contrary to

O.C.G.A. §§ 48-4-40 and 48-4-41, the redemption was void. DRST Holdings, Ltd. v. Brown, 290 Ga. 317, 720 S.E.2d 626 (2012).

Tender and Payment

Failure to allege payment or tender before filing action to redeem.

Trial court did not err in granting a purchaser's motion to dismiss a redemption company's action to enforce redemption of real property because both the company's pre-suit tender to the purchaser and the subsequent tender to the bank that held a security deed on the property long after adding the bank as a party to the redemption action failed to meet the legal requirement of O.C.G.A. § 48-4-40 that tender to the proper party be made prior to the filing of suit; tender should have been made to the bank, which had already been named as the grantee in a security deed by the purchaser of the tax deed before suit was filed. Cmty. Renewal & Redemption v. Nix, 288 Ga. 439, 704 S.E.2d 759 (2011).

48-4-41. Redemption by creditor without lien.

JUDICIAL DECISIONS

Interest acquired following redemption date. — Oral agreement to buy a homeowner's association's lien and indebtedness against real property was required to be in writing and signed by the party to be charged, pursuant to O.C.G.A. § 13-5-30(4); because the buyer did not acquire an interest in the property until after the date of redemption, contrary to O.C.G.A. §§ 48-4-40 and 48-4-41, the redemption was void. DRST Holdings, Ltd. v. Brown, 290 Ga. 317, 720 S.E.2d 626 (2012).

48-4-42. Amount payable for redemption.

JUDICIAL DECISIONS

Agreement to redeem. — In taxpayers' claim against a purchaser's assignee for rescission of a redemption agreement, the facts did not support rescission. The assignee's attorney did not defraud them or conceal any facts, but advised them to hire an attorney, and any failure to advise them of their legal rights was an opinion as to a matter of law and not a material fact. Boyd v. JohnGalt Holdings, LLC, 294 Ga. 640, 755 S.E.2d 675 (2014).

48-4-43. Effect of redemption.

JUDICIAL DECISIONS

No right to excess funds generated by tax sale. — Trial court did not err in granting a tax commissioner summary judgment in a lienholder's action under O.C.G.A. § 15-13-3 to recover excess funds from a tax sale because at the time of the tax sale, at the time the tax commissioner notified the record owner of the property and record lienholders of the excess tax sale funds, and at the time the tax commissioner paid the excess tax sale funds to the record owner of the property, the lienholder had no recorded lien or interest in the property; after the tax commissioner fulfilled the obligation under O.C.G.A. § 48-4-5(a) to give notice to the record property owner and lienholders, the property owner submitted the only claim to the tax commissioner for the excess tax sale funds, and the lienholder failed to show that more was required of the tax commissioner before the funds

were disbursed. Brina Bay Holdings, LLC v. Echols, 314 Ga. App. 242, 723 S.E.2d 533 (2012).

48-4-45. Notice of foreclosure of right to redeem; time; persons entitled to notice.

JUDICIAL DECISIONS

Bankruptcy. — Tax sale purchaser creditor's motion for relief from the automatic stay under 11 U.S.C. § 362(d) was denied, and the debtor could not yet proceed to foreclose on debtor's equity of redemption under the barment provisions of O.C.G.A. §§ 48-4-45 and 48-4-46 because the foreclosure was filed after the chapter 13 bankruptcy petition. Greyfield Res., Inc. v. Drummer (In re Drummer), 457 B.R. 912 (Bankr. N.D. Ga. 2011).

Although the time period for the chapter 13 debtor to exercise the debtor's right of redemption as to the tax deed sale of the debtor's real property passed, under O.C.G.A. § 48-4-45, the debtor could still pay the claim pursuant to 11 U.S.C. § 1322 as a claim under the debtor's chapter 13 plan. Francis v. Scorpion Group, LLC (In re Francis), 489 B.R. 262 (Bankr. N.D. Ga. 2013).

RESEARCH REFERENCES

ALR. — Recovery of sales taxes paid on bad debts, 38 ALR6th 255.

48-4-46. Form of notice of foreclosure of right to redeem; service; time; return and record; waiver.

JUDICIAL DECISIONS

Bankruptcy. — Tax sale purchaser creditor's motion for relief from the automatic stay under 11 U.S.C. § 362(d) was denied, and the debtor could not yet proceed to foreclose on debtor's equity of redemption under the barment provisions of O.C.G.A. §§ 48-4-45 and 48-4-46 because the foreclosure was filed after the chapter 13 bankruptcy petition. Greyfield Res., Inc. v. Drummer (In re Drummer), 457 B.R. 912 (Bankr. N.D. Ga. 2011).

48-4-47. Tender of redemption price before action to cancel tax deed.

JUDICIAL DECISIONS

Failure to give notice of right to redemption. — O.C.G.A. § 48-4-47 was inapplicable in a redemption company's action against a purchaser to enforce redemption of real property because the purchaser had not given the statutorily required notice of foreclosure of the right to redemption at any time since the purchaser's purchase of the property by tax deed. Cmty. Renewal & Redemption v. Nix, 288 Ga. 439, 704 S.E.2d 759 (2011).

ARTICLE 4

LAND BANK AUTHORITIES

48-4-61. Land bank authority established by interlocal cooperation agreement; powers; purpose; dissolution.

(a) One or more cities and the county containing such cities may enter into an interlocal cooperation agreement, or a consolidated government may adopt a resolution, for the purpose of establishing a land bank authority pursuant to this article.

(b) The authority shall be a public body corporate and politic with the power to sue and be sued, to accept and issue deeds in its name, including without limitation the acceptance of real property in accordance with the provisions of subsection (f) of Code Section 9-16-19, and to institute quia timet actions and shall have any other powers necessary and incidental to carry out the powers granted by this article.

(c) The authority shall be established to acquire the tax delinquent properties of the parties and any property deeded to it pursuant to paragraph (2.1) of subsection (u) of Code Section 16-13-49 in order to foster the public purpose of returning land which is in a nonrevenue-generating, nontax-producing status to an effective utilization status or of returning real property forfeited pursuant to Code Section 16-13-49 to such status in order to provide housing, new industry, and jobs for the citizens of the county. The authority shall have the powers provided in this article and those necessary and incidental to the exercise of such powers.

(d) Any authority established pursuant to this article may be dissolved by any party to the agreement or by resolution of a consolidated government or, where multiple cities are involved, any city may withdraw from the agreement which established the authority, or such authority may be dissolved by local Act of the General Assembly.

(e) An authority whose parties form a consolidated government after entering into an interlocal cooperation agreement shall thereafter operate under and be governed by the provisions of this article applicable to authorities of consolidated governments as if created by resolution of a consolidated government. The board governing such an authority shall be reconstituted by resolution of the consolidated governments in conformity with the provisions of subsection (a) of Code Section 48-4-62 prior to the first meeting of such board subsequent to the effective date of consolidation of the party governments.

(f) No land bank authority shall be created pursuant to this article on or after July 1, 2012. Except as otherwise provided in subsection (j) of Code Section 48-4-104, any land bank created pursuant to this article

prior to July 1, 2012, shall continue to be governed by this article. (Code 1981, § 48-4-61, enacted by Ga. L. 1990, p. 1875, § 3; Ga. L. 1996, p. 824, § 1; Ga. L. 1997, p. 882, § 1; Ga. L. 2002, p. 1286, § 2; Ga. L. 2012, p. 1055, § 1/SB 284; Ga. L. 2015, p. 693, § 3-28/HB 233.)

The 2012 amendment, effective July 1, 2012, added subsection (f).

The 2015 amendment, effective July 1, 2015, substituted "provisions of subsection (f) of Code Section 9-16-19" for "provisions of paragraph (2.1) of subsection (u) of Code Section 16-13-49" in subsection (b).

ARTICLE 5

AD VALOREM TAX FORECLOSURES

48-4-77. Definitions.

JUDICIAL DECISIONS

"Interested party."

Definition of "interested party" in O.C.G.A. § 48-4-77(1)(A) for purposes of a tax foreclosure has no application to an action to redeem property after a tax sale; however, even if the definition was applicable, it was unlikely that the bank that held a security deed on real property would constitute an interested party as one having an interest in the property whose identity and address were reasonably ascertainable from the records maintained in the county courthouse or by the clerk of court. Cmty. Renewal & Redemption v. Nix, 288 Ga. 439, 704 S.E.2d 759 (2011).

48-4-78. Identification of properties on which ad valorem taxes are delinquent; petition for tax foreclosure; contents of petition; notice.

Law reviews. — For annual survey on real property, see 66 Mercer L. Rev. 151 (2014).

For comment, "Making Debt Pay: Examining the Use of Property Tax Delinquency as a Revenue Source," see 62 Emory L.J. 217 (2012).

JUDICIAL DECISIONS

Substantial compliance not sufficient. — Petitions for ad valorem tax foreclosure of abatement liens against homeowners were denied because the petitions failed to comply with the clear and unambiguous requirements of O.C.G.A. § 48-4-78 because the petitions were filed against the owners of the properties rather than against the properties for which the taxes were delinquent. Porche v. Noriega, 325 Ga. App. 524, 754 S.E.2d 112 (2014).

ARTICLE 6

LAND BANKS

Effective date. — This article became effective July 1, 2012.

48-4-100. Short title; applicability.

(a) This article shall be known and may be cited as the "Georgia Land Bank Act."

(b) Any land bank created prior to July 1, 2012, pursuant to Article 4 of this chapter shall not be affected by this article but shall be entitled to continue in existence and exercise all powers granted in such article. The board of any existing land bank may vote, in the manner provided in subsection (j) of Code Section 48-4-104, to continue in existence under the provisions of this article, thus exercising the additional authorities and powers contained herein. (Code 1981, § 48-4-100, enacted by Ga. L. 2012, p. 1055, § 2/SB 284.)

48-4-101. Findings and declarations.

The General Assembly finds and declares that:

(1) Georgia's communities are important to the social and economic vitality of this state. Whether urban, suburban, or rural, many communities are struggling to cope with dilapidated, abandoned, and tax delinquent properties;

(2) Citizens of Georgia are affected adversely by dilapidated, abandoned, and tax delinquent properties, including properties that have been abandoned due to mortgage foreclosure;

(3) Dilapidated, abandoned, and tax delinquent properties impose significant costs on neighborhoods and communities by lowering property values, increasing fire and police protection costs, decreasing tax revenues, and undermining community cohesion;

(4) There is an overriding public need to confront the problems caused by dilapidated, abandoned, and tax delinquent properties, and to return properties which are in nonrevenue-generating, nontax-producing status to an effective utilization status in order to provide affordable housing, new industry, and jobs for the citizens of this state through the creation of new tools that enable communities to turn abandoned spaces into vibrant places; and

(5) Land banks are one of the tools that can be utilized by communities to facilitate the return of dilapidated, abandoned, and tax delinquent properties to productive use. (Code 1981, § 48-4-101, enacted by Ga. L. 2012, p. 1055, § 2/SB 284.)

48-4-102. Definitions.

As used in this article, the term:

(1) "Board of directors" or "board" means the board of directors of a land bank.

(2) "Consolidated government" means a unified government created pursuant to Article IX, Section III, Paragraph II of the Constitution of Georgia.

(3) "Intergovernmental contract" means a contract as authorized pursuant to Article IX, Section III, Paragraph I of the Constitution of Georgia and paragraph (5) of Code Section 36-34-2, and entered into by counties, consolidated governments, and municipal corporations pursuant to this article.

(4) "Land bank" means a public body corporate and politic established in accordance with the provisions of this article.

(5) "Land bank member" means the local governments that are parties to the intergovernmental contract or resolution creating a land bank and the local governments that join a land bank subsequent to its creation pursuant to the provisions of this article.

(6) "Real property" means all lands and the buildings thereon, all things permanently attached to land or to the buildings thereon, and any interest existing in, issuing out of, or dependent upon land or the buildings thereon.

(7) "School district" means any school district, independent school system, or other local school system in this state. (Code 1981, § 48-4-102, enacted by Ga. L. 2012, p. 1055, § 2/SB 284.)

48-4-103. Creation; existence; board membership.

(a) Any county, municipal corporation, or consolidated government may elect to create a land bank in accordance with subsection (b) of this Code section by the adoption of a local law, ordinance, or resolution as appropriate to the applicable counties, consolidated governments, or municipal corporations, which action specifies the following:

(1) The name of the land bank;

(2) The number of members of the board of directors, which shall consist of an odd number of board members and be not less than five board members or more than 11 board members;

(3) The initial individuals to serve as board members and the length of terms for which they will serve; and

(4) The qualifications, manner of selection or appointment, and terms of office of board members.

(b) A land bank may be created pursuant to an intergovernmental contract by any of the following and any combination of the following methods:

(1) A county and one or more municipal corporations located wholly or partially within the county;

(2) Two or more counties and one or more municipal corporations located wholly or partially within the geographical boundaries of each county;

(3) A consolidated government and one or more municipal corporations located wholly or partially within the same county as the consolidated government; or

(4) Any consolidated government without a municipal corporation located wholly or partially within the same county as the consolidated government may create a land bank as follows:

(A) Through ordinance or resolution of the governing authority of the consolidated government;

(B) Through an intergovernmental contract with another consolidated government without a municipal corporation located wholly or partially within the same county as the consolidated government; or

(C) Through an intergovernmental contract with other counties, municipal corporations, or consolidated governments creating land banks pursuant to paragraph (1), (2), or (3) of this subsection.

(c) Any intergovernmental contract creating a land bank shall specify the matters identified in subsection (a) of this Code section.

(d) Subject to the limitations of subsection (b) of this Code section, any county or municipal corporation or consolidated government may elect to join any preexisting land bank by executing the intergovernmental contract or resolution that created the land bank and such other documentation as may be necessary.

(e) A land bank shall have the power to acquire real property only in those portions of the county located outside of the geographical boundaries of a nonparticipating municipal corporation located within the county; provided, however, that a land bank may acquire real property lying within such nonparticipating municipal corporation with the consent of such municipal corporation.

(f) A school district may participate in a land bank pursuant to an intergovernmental contract provided such contract specifies any members of the board of education serving on the board of the land bank and any actions of the land bank which are subject to approval by the board of education.

(g) A land bank shall be a public body corporate and politic and shall have permanent and perpetual duration until terminated and dissolved

in accordance with the provisions of subsection (c) of Code Section 48-4-111. (Code 1981, § 48-4-103, enacted by Ga. L. 2012, p. 1055, § 2/SB 284.)

48-4-104. Initial size of board; continuation of land banks created before July 1, 2012; eligibility to serve; selection of chairperson and officers; governing rules and regulations; vacancies; compensation; meetings; quorum; adoption of bylaws; immunity from personal liability; voting.

(a) The initial size of a board shall be determined in accordance with paragraph (2) of subsection (a) of Code Section 48-4-103. Unless restricted by the actions or agreements specified in Code Section 48-4-103, and subject to the limits stated in this Code section, the size of the board may be adjusted in accordance with the bylaws of the land bank.

(b) In the event the board of a land bank created by a county and a municipal corporation or by a consolidated government before July 1, 2012, votes to continue in existence under the provisions of this article, the land bank members shall jointly nominate and approve at least one additional board member so that there is an odd number of board members. In the event the land bank members of such a preexisting land bank are unable to approve such additional board members, such preexisting land bank shall not exist under the provisions of this article unless and until a new intergovernmental contract is approved in accordance with this article.

(c) Notwithstanding any law to the contrary, an elected member of the municipal governing authority shall be eligible to serve as a board member, and the acceptance of the appointment shall neither terminate nor impair that public office. Any municipal employee shall be eligible to serve as a board member. Notwithstanding any law to the contrary, an elected member of the county governing authority shall be eligible to serve as a board member, and the acceptance of the appointment shall neither terminate nor impair that public office. Any county employee shall be eligible to serve as a board member. Notwithstanding any law to the contrary, an elected member of a consolidated government governing authority shall be eligible to serve as a board member, and the acceptance of the appointment shall neither terminate nor impair that public office. Any consolidated government employee shall be eligible to serve as a board member. A tax commissioner or tax collector, or both, may serve ex officio as a member of the land bank board if so authorized by the intergovernmental contract, local law, ordinance, or resolution that creates the land bank or by subsequent intergovernmental contracts with the land bank members.

(d) The members of the board shall select annually from among themselves a chairperson, vice chairperson, secretary, treasurer, and such other officers as the board may determine and shall establish their duties as may be regulated by the intergovernmental contract or by rules adopted by the board. When in actual conflict the intergovernmental contract shall control over the bylaws or rules adopted by the board.

(e)(1) The board shall establish rules and regulations relative to the attendance and participation of board members in its regular and special meetings. The rules and regulations may prescribe a procedure whereby a board member who fails to comply with the rules and regulations of the board may be removed from office by no less than a majority vote of the remaining members of the board, and that board member's position shall be vacant as of the first day of the next calendar month.

(2) A land bank member may remove any board member appointed by that land bank member.

(3) Any board member removed under the provisions of this subsection shall be ineligible for reappointment to the board, unless the reappointment is confirmed by at least a two-thirds' vote of the governing authority of the appointing land bank member.

(f) A vacancy on the board shall be filled in the same manner as the original appointment.

(g) Board members shall serve without compensation. The board may reimburse a board member for expenses actually incurred in the performance of duties on behalf of the land bank.

(h) The board shall meet in regular session according to a schedule adopted by the board and also shall meet in special session as convened by the chairperson or upon written notice signed by a majority of the board members.

(i) A quorum of board membership shall be a simple majority of the entire board membership, and no action of the board shall be taken in the absence of a quorum. All actions of the board must be approved by the affirmative vote of a majority of the members of the board present and voting; provided, however, that no action of the board shall be authorized on the following matters unless approved by a majority of the entire board membership:

(1) Adoption of bylaws and other rules and regulations for conduct of the land bank's business;

(2) Hiring or firing of any employee or contractor of the land bank. Such function may by majority vote be delegated by the board to a

specified officer or committee of the land bank under such terms and conditions and to the extent that the board may specify;

(3) Incurring of debt;

(4) Adoption or amendment of the annual budget; and

(5) Sale, lease, encumbrance, or alienation of real property, improvements, or personal property with a value of more than $50,000.

(j) A land bank created pursuant to Article 4 of this chapter may continue in existence in accordance with provisions of this article upon the unanimous consent of the board members, and contingent upon the appointment of at least one additional board member pursuant to subsection (b) of this Code section.

(k) A board member shall not be liable personally on obligations of the land bank, and the rights of creditors of a land bank shall be solely against the land bank.

(l) A board member shall be prohibited from voting by proxy. A board member may request a recorded vote on any resolution or action of the land bank. (Code 1981, § 48-4-104, enacted by Ga. L. 2012, p. 1055, § 2/SB 284.)

48-4-105. Employment of executive director, legal counsel, technical experts, agents, and employees; contracts and agreements with localities for staffing services.

A land bank may employ an executive director, its own counsel and legal staff, and such technical experts, other agents, and employees, permanent or temporary, as it may require and may determine the qualifications and fix the compensation and benefits of those persons. A land bank may also enter into contracts and agreements with municipal corporations or counties or consolidated governments for staffing services to be provided to the land bank by agencies or departments thereof or for a land bank to provide such staffing services to agencies or departments thereof. (Code 1981, § 48-4-105, enacted by Ga. L. 2012, p. 1055, § 2/SB 284.)

48-4-106. Powers; limitation or withdrawal of power by land bank member under certain circumstances.

(a) A land bank shall constitute a public body, corporate and politic, and shall have all powers necessary or appropriate to carry out and effectuate the purposes and provisions of this article, including the following powers:

(1) To adopt, amend, and repeal bylaws for the regulation of its affairs and the conduct of its business;

(2) To sue and be sued in its own name and plead and be impleaded in all civil actions, including, but not limited to, actions to clear title to property of the land bank;

(3) To adopt a seal and to alter the same at pleasure;

(4) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real or personal property of every kind and character, or any interest therein, in furtherance of the public purposes of the land bank;

(5) To acquire, accept, or retain equitable interests, security interests, or other interests in any real property, personal property, or fixtures by loan agreement, note, mortgage, deed to secure debt, trust deed, security agreement, assignment, pledge, conveyance, contract, lien, loan agreement, or other consensual transfer in order to secure credit extended by the land bank;

(6) To borrow from private lenders, from municipal corporations, counties, or consolidated governments, from the state, or from federal government funds, as may be necessary, for the operation and work of the land bank;

(7) To borrow money to further or carry out its public purpose and to execute notes, other obligations, leases, trust indentures, trust agreements, agreements for the sale of its notes or other obligations, loan agreements, mortgages, deeds to secure debt, trust deeds, security agreements, assignments, and such other agreements or instruments as may be necessary or desirable, in the judgment of the land bank, to evidence and to provide security for such borrowing;

(8) To issue notes or other obligations of the land bank and use the proceeds thereof for the purpose of paying all or any part of the cost of any land bank projects and otherwise to further or carry out the public purpose of the land bank and to pay all costs of the land bank incidental to, or necessary and appropriate to, furthering or carrying out such purpose;

(9) To make application directly or indirectly to any federal, state, county, or municipal government or agency or to any other source, whether public or private, for loans, grants, guarantees, or other financial assistance in furtherance of the land bank's public purpose and to accept and use the same upon such terms and conditions as are prescribed by such federal, state, county, or municipal government or agency or other source;

(10) To enter into agreements with the federal government or any agency thereof to use the facilities or services of the federal government or any agency thereof in order to further or carry out the public purposes of the land bank;

(11) A land bank shall have no authority to lend money to a nongovernmental entity; provided, however, that a land bank may administer funds in the form of a loan to a nongovernmental entity when such funds are received from federal, state, and local government entities for the purpose of making such loans; provided, further, that only such transactions which are fully consistent with the purpose of the land bank shall be permitted. In those transactions, a land bank may extend credit to any person, corporation, partnership, whether limited or general, or other entity for the costs of any land bank projects which credit may be evidenced or secured by loan agreements, notes, mortgages, deeds to secure debt, trust deeds, security agreements, assignments, or such other instruments, or by rentals, revenues, fees, or charges, upon such terms and conditions as the land bank shall determine to be reasonable in connection with such extension of credit, including provision for the establishment and maintenance of reserve funds, and, in the exercise of powers granted by this article in connection with any land bank projects the land bank shall have the right and power to require the inclusion in any such loan agreement, note, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other instrument of such provisions or requirements for guaranty of any obligations, insurance, construction, use, operation, maintenance, and financing of a project, and such other terms and conditions, as the land bank may deem necessary or desirable;

(12) As security for repayment of any notes or other obligations of the land bank, to pledge, mortgage, convey, assign, hypothecate, or otherwise encumber any property of the land bank, including, but not limited to, real property, fixtures, personal property, and revenues or other funds, and to execute any lease, trust indenture, trust agreement, agreement for the sale of the land bank's notes or other obligations, loan agreement, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other agreement or instrument as may be necessary or desirable, in the judgment of the land bank, to secure any such notes or other obligations, which instruments or agreements may provide for foreclosure or forced sale of any property of the land bank upon default in any obligation of the land bank, either in payment of principal, premium, if any, or interest or in the performance of any term or condition contained in any such agreement or instrument. The state, on behalf of itself and each county, municipal corporation, political subdivision, or taxing district therein, waives any right it or such county, municipal corporation, political subdivision, or taxing district may have to prevent the forced sale or foreclosure of any property of the land bank upon such default and agrees that any agreement or instrument encumbering such property may be foreclosed in accordance with law and the terms thereof;

(13) To receive and administer gifts, grants, and devises of money and property of any kind and to administer trusts;

(14) To use any real property, personal property, or fixtures or any interest therein or to rent or lease such property to or from others or make contracts with respect to the use thereof, or to sell, lease, exchange, transfer, assign, pledge, or otherwise dispose of or grant options for any such property in any manner as it deems to be in the best interests of the land bank and the public purpose thereof;

(15) To procure insurance or guarantees from the General Assembly or federal government of the payments of any debts or parts thereof incurred by the land bank and to pay premiums in connection therewith;

(16) To enter into contracts and other instruments necessary, incidental, or convenient to the performance of its duties and the exercise of its powers, including, but not limited to, intergovernmental contracts for the joint exercise of powers under this article. Intergovernmental contracts with municipal corporations, counties, or consolidated governments may include contracts for the performance of services by municipal corporations, counties, or consolidated governments on behalf of the land bank or by the land bank on behalf of municipal corporations, counties, or consolidated governments, whether or not such counties, consolidated governments, or municipal corporations are located inside or outside the geographical boundaries of the land bank members;

(17) To procure insurance against losses in connection with the real property, assets, or activities of the land bank;

(18) To accept and issue deeds in its name, including without limitation the acceptance of real property in accordance with the provisions of paragraph (2.1) of subsection (u) of Code Section 16-13-49;

(19) To finance by loan, grant, lease, or otherwise, refinance, construct, erect, assemble, purchase, acquire, own, repair, remodel, rehabilitate, modify, maintain, extend, improve, install, sell, equip, expand, add to, operate, or manage real property or rights or interests in property, and to pay the costs of any such project from the proceeds of loans by persons, corporations, partnerships, whether limited or general, or other entities, all of which the land bank is authorized to receive, accept, and use;

(20) To fix, charge, and collect rents, fees, and charges for the use of real property of the land bank and for services provided by the land bank;

(21) To grant or acquire a license, easement, lease, as lessor or lessee, or option with respect to real property of the land bank;

(22) To enter into partnerships, joint ventures, and other collaborative relationships with municipalities and other public and private entities for the ownership, management, development, and disposition of real property;

(23) To hold title to real property for purposes of establishing contracts with nonprofit community land trusts, including, but not limited to, long-term lease contracts;

(24) To organize and reorganize the executive, administrative, clerical, and other departments of the land bank and to fix the duties, powers, and compensation of all employees, agents, and consultants of the land bank; and

(25) To do all other things necessary or convenient to achieve the objectives and purposes of the land bank or other laws that relate to the purposes and responsibilities of the land bank.

(b) The exercise of a specific power by a land bank may be limited or withdrawn by a land bank member when the land bank is acting with respect to real property within the jurisdiction of such member. Procedures for the exercise of such limitation or withdrawal of power shall be provided in the intergovernmental contract. (Code 1981, § 48-4-106, enacted by Ga. L. 2012, p. 1055, § 2/SB 284.)

48-4-107. Eminent domain.

A land bank shall neither possess nor exercise the power of eminent domain. (Code 1981, § 48-4-107, enacted by Ga. L. 2012, p. 1055, § 2/SB 284.)

48-4-108. Exemption of land bank property from state and local taxation; acquisition of real property interests; land bank prohibited from owning or holding real property located outside geographical boundaries.

(a) The real property of a land bank and its income and operations are exempt from all taxation by the state and by any of its political subdivisions, including, but not limited to, real property held by a land bank as lessor pursuant to long-term lease contracts with community land trusts.

(b) A land bank may acquire real property or interests in real property by gift, devise, transfer, exchange, foreclosure, purchase, or otherwise on terms and conditions and in a manner the board considers is in the best interest of the land bank.

(c)(1) A land bank may acquire real property by purchase contracts, lease-purchase agreements, and may accept transfers from municipal

corporations, counties, or consolidated governments upon such terms and conditions as agreed to by the land bank and the municipal corporation, county, or consolidated government.

(2) Notwithstanding any other law to the contrary, a municipal corporation, county, or consolidated government may transfer to a land bank real property and interests in real property of the municipal corporation, county, or consolidated government on such terms and conditions and according to such procedures as determined by the municipal corporation, county, or consolidated government, so long as the real property is located within the geographical boundaries of the land bank.

(3) The acquisition of property by the land bank shall not be governed or controlled by any regulations or laws relating to procurement or acquisition of property of the counties, consolidated governments, or municipal corporations that are members of the land bank unless specifically provided in the applicable intergovernmental contract or resolution, and transfers of property by municipal corporations, counties, or consolidated governments to the land bank shall be treated as transfers to a body politic as contemplated by subparagraph (a)(2)(A) of Code Section 36-9-3.

(d) A land bank shall maintain all of its real property in accordance with the laws and ordinances of the jurisdiction in which the real property is located.

(e)(1) Except as otherwise provided in paragraph (2) of this subsection, a land bank shall not own or hold real property located outside the geographical boundaries of the land bank members.

(2) A land bank may be granted pursuant to an intergovernmental contract with a county, consolidated government, or municipal corporation the authority to manage and maintain real property located within the geographical boundaries of such county, consolidated government, or municipal corporation, but outside the geographical boundaries of the land bank members. (Code 1981, § 48-4-108, enacted by Ga. L. 2012, p. 1055, § 2/SB 284.)

48-4-109. Land bank to hold acquired property in own name; public review and inspection of real property inventory; consideration necessary for property transactions; hierarchical ranking of priorities for use.

(a) A land bank shall hold in its own name all real property acquired by the land bank without regard to the identity of the transferor of the property.

(b) A land bank shall maintain and make available for public review and inspection an inventory of all real property held by the land bank.

(c) A land bank may convey, exchange, sell, transfer, lease as lessor, grant, and mortgage as mortgagor any and all interests in, upon, or to real property of the land bank in some form and by such method as determined by the board to be in the best interest of the land bank.

(d)(1) A land bank shall determine the terms, conditions, form, and substance of consideration necessary to convey, exchange, sell, transfer, lease as lessor, grant, and mortgage as mortgagor any interests in, upon, or to real property.

(2) Consideration may take the form of monetary payments and secured financial obligations, covenants, and conditions related to the present and future use of the property, contractual commitments of the transferee, and such other forms of consideration as determined by the board to be in the best interest of the land bank.

(e)(1) The board shall determine and state in the land bank policies and procedures the general terms and conditions for consideration to be received by the land bank for the transfer of real property and interests in real property.

(2) The disposition of property by the land bank shall not be governed or controlled by any regulations or laws of the participating land bank members unless specifically provided in the applicable intergovernmental contract.

(f) Land bank members may, in the resolution or intergovernmental contract creating a land bank, establish a hierarchical ranking of priorities for the use of real property conveyed by a land bank, or, if the resolution or intergovernmental contract creating the land bank is silent, the board of directors may establish a hierarchical ranking of priorities for the use of real property conveyed by a land bank, including but not limited to:

(1) Use for purely public spaces and places;

(2) Use for affordable housing;

(3) Use for retail, commercial, and industrial activities;

(4) Use as conservation areas;

(5) Use for land trusts or for other public entities; and

(6) Such other uses and in such hierarchical order as determined by the board of directors of the land bank.

(g)(1) Subject to the requirements of paragraph (5) of subsection (i) of Code Section 48-4-104, a county, municipal corporation, or consolidated government may, in the applicable intergovernmental contract or in the resolution creating a land bank, require that any particular form of disposition of real property, or any disposition of real property

located within specified jurisdictions, be subject to specified voting and approval requirements of the board.

(2) Except and unless restricted or constrained as provided in paragraph (1) of this subsection, the board may delegate to officers and employees the authority to enter into and execute agreements, instruments of conveyance, and all other related documents pertaining to the conveyance of real property by the land bank. (Code 1981, § 48-4-109, enacted by Ga. L. 2012, p. 1055, § 2/SB 284.)

48-4-110. Funding through grants and loans; receipt of payments for various activities; remission of real property tax; allocation of proceeds from sale of property.

(a) A land bank may receive funding through grants and loans from the land bank members, from any other municipal corporations, counties, or consolidated governments in the state, from the General Assembly, from the federal government, and from other public and private sources.

(b) A land bank may receive and retain payments for services rendered, for rents and leasehold payments received, for consideration for disposition of real and personal property, for proceeds of insurance coverage for losses incurred, for income from investments, and for any other asset and activity lawfully permitted to a land bank under this article.

(c) Up to 75 percent of the real property taxes collected on real property, exclusive of any state or school district ad valorem tax, conveyed by a land bank pursuant to the laws of this state shall be remitted to the land bank. The specific percentage of such taxes to be remitted, as to each land bank member, shall be set forth in the local law, ordinance, or resolution or in the intergovernmental contract of the land bank. Such allocation of property tax revenues shall commence with the first taxable year following the date of conveyance and shall continue for a period of five years. Such funds shall be remitted to the land bank in accordance with the administrative procedures established by the tax commissioner or tax collector of the county or counties in which the land bank is located. Such allocation of property tax revenues shall not occur if such taxes have been previously allocated to a tax allocation district, or to secure a debt of the municipal corporation or consolidated government, unless the tax allocation district, municipal corporation, county, or consolidated government enters into an agreement with the land bank for the remittance of such funds to the land bank.

(d) At the time that the land bank sells or otherwise disposes of property as part of its land bank program, the proceeds from the sale,

if any, shall be allocated as determined by the land bank among the following priorities:

(1) Furtherance of land bank operations;

(2) Recovery of land bank expenses; and

(3) Remitter to the tax commissioner or tax collector for distribution to the appropriate taxing entity in proportion to and to the extent of their respective tax bills and costs.

Any excess proceeds shall be distributed pursuant to any applicable intergovernmental contract or land bank rules, regulations, or bylaws in accordance with the public policy stated in this article. (Code 1981, § 48-4-110, enacted by Ga. L. 2012, p. 1055, § 2/SB 284.)

48-4-111. Public meetings; conflicts of interest; dissolution.

(a) All meetings shall be open to the public, except as otherwise provided by Chapter 14 of Title 50, and a written record shall be maintained of all meetings. All records of a land bank shall be subject to Article 4 of Chapter 18 of Title 50, relating to open records.

(b) No board member or employee of a land bank shall acquire any interest, direct or indirect, in real property owned or to be acquired by the land bank, nor shall any board member assist any third party in negotiating against the land bank for property identified by the land bank for acquisition by the land bank. No board member or employee of a land bank shall have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used by a land bank. The board may adopt supplemental rules and regulations addressing potential conflicts of interest and ethical guidelines for board members and land bank employees.

(c)(1) A land bank may be dissolved as a public body corporate and politic 60 calendar days after an affirmative resolution approved by two-thirds of the membership of the board.

(2) Sixty calendar days' advance written notice of consideration of a resolution of dissolution shall be given to the governing authorities of the land bank members, shall be published in a local newspaper of general circulation.

(3) Upon dissolution of the land bank, all real property, personal property, and other assets of the land bank shall become the assets of the municipal corporation, county, or consolidated government in which the property is located, unless provided otherwise in any applicable intergovernmental contracts.

(4) Land banks created pursuant to paragraphs (2) through (4) of subsection (b) of Code Section 48-4-103 shall not automatically

dissolve upon the withdrawal of one or more land bank members unless the intergovernmental contract so provides, except that no municipal corporation may maintain the existence of a land bank if the county in which the municipal corporation is located withdraws from the land bank, and no county may maintain the existence of a land bank if the single municipal corporation that is both located within that county and is a member of the land bank withdraws from the land bank. (Code 1981, § 48-4-111, enacted by Ga. L. 2012, p. 1055, § 2/SB 284.)

48-4-112. Extinguishment of prior encumbrances, liens, and claims for real property taxes owed; remission to tax collector; tax collector authorized to assign, transfer, or sell to land bank certain ad valorem tax executions; content of notice of transfer; nonjudicial tax sale.

(a) Whenever any real property is acquired by a land bank and is encumbered by a lien or claim for real property taxes owed to one or more of the land bank members or to municipal corporations, counties, or consolidated governments that have an intergovernmental contract with the land bank, the land bank may, by resolution of the board, discharge and extinguish any and all such liens or claims. The decision by the board to extinguish such liens or claims is subject to the voting requirements contained in subsection (i) of Code Section 48-4-104. Unless provided otherwise in an applicable intergovernmental contract, whenever any real property is acquired by a land bank and is encumbered by a lien or claim for real property taxes owed to a school district, the land bank shall notify the school district of its intent to extinguish all such liens and claims in writing. If the school district fails to object in written form to the proposed extinguishment within 30 days of receipt of such notice to the land bank, the land bank shall have the power, by resolution of the board, to discharge and extinguish any and all such liens or claims. To the extent necessary and appropriate, the land bank shall file in appropriate public records evidence of the extinguishment and dissolution of such liens or claims.

(b) To the extent that a land bank receives payments of any kind attributable to liens or claims for real property taxes owed to a municipal corporation, county, consolidated government, or school district on property acquired by the land bank, the land bank shall remit the full amount of the payments to the tax commissioner or tax collector for distribution to the appropriate taxing entity.

(c)(1) A tax commissioner or tax collector may assign, transfer, or sell to a land bank any ad valorem tax executions issued against a single property or ad valorem tax executions issued against multiple tracts of property in the geographical jurisdiction of the land bank in one or

more transactions and upon such terms and conditions as are mutually acceptable to the tax commissioner and the land bank. Notwithstanding the notice requirements in subsection (c) of Code Section 48-3-19, when the land bank is the holder of a tax execution, the land bank shall provide notice of the transfer of the tax execution to the land bank in the following manner:

(A) Immediately upon acquisition of one or more tax executions, the land bank shall send notice of the tax execution transfer by certified mail, return receipt requested, to all interested parties whose identity and address are reasonably ascertainable. Copies of the notice of the tax execution transfer shall also be sent by first class mail to the property address to the attention of the occupants of the property, if any. In addition, notice shall be posted on the property; and

(B) Within 30 days of the tax execution transfer, the land bank shall cause a notice of the tax execution transfer to be published on two separate dates in the official organ of the county in which the property is located.

(2) The notice contained in subparagraphs (A) and (B) of paragraph (1) of this subsection shall specify:

(A) The name of the land bank and the contact information for the individual responsible for collecting the delinquent taxes;

(B) The property address;

(C) A description of the property;

(D) The tax identification number of the property;

(E) The applicable period of tax delinquency; and

(F) The principal amount of the delinquent taxes together with interest and penalties.

(3) The land bank may submit the execution to the levying officer 12 months after the date of transfer or 24 months after the tax giving rise to the execution was originally due, whichever is earlier.

(d)(1) Notwithstanding any other provision of law, at a nonjudicial tax sale conducted pursuant to Article 1 of this chapter where the tax commissioner or tax collector or the land bank is the holder of the tax execution giving rise to the sale, a land bank may tender a bid in an amount equal to the total amount of all tax liens which were the basis of the execution and any accrued interest, penalties, and costs. In the event of such tender by the land bank, such bid comprises the land bank's commitment to pay not more than all costs of the sale and its assumption of liability for all taxes, accrued interest thereon, and

penalties, and, if there is no other bid, the tax commissioner or tax collector shall accept the land bank's bid and make a deed of the property to the land bank.

(2) If there are third parties who bid on a given parcel and the land bank tenders the highest bid on that parcel, the land bank shall pay the tax commissioner or tax collector the full amount of the bid tendered by the land bank in order to obtain the parcel.

(e)(1) A land bank may tender a bid at any sale ordered by the court pursuant to Article 5 of this chapter in an amount equal to the total amount of all tax liens which were the basis of the judgment and any accrued interest, penalties, and costs. In the event of such tender by the land bank, such bid shall comprise the land bank's commitment to pay not more than all costs of the sale and its assumption of liability for all taxes, accrued interest thereon, and penalties. If there is no other bid and the property is not redeemed by the owner in accordance with subsection (c) of Code Section 48-4-81, the tax commissioner or tax collector shall accept the land bank's bid and make a deed of the property to the land bank.

(2) If there are third parties who bid on a given parcel and the land bank tenders the highest bid on that parcel, the land bank shall pay the tax commissioner or tax collector the full amount of the bid tendered by the land bank in order to obtain the parcel.

(3) Subject to the statutory 60 day redemption period required pursuant to subsection (c) of Code Section 48-4-81, the land bank, as purchaser at such sale, shall take and thereafter have an absolute title to the property sold, free and discharged of all tax and municipal claims, liens, mortgages, charges, and estates of whatsoever kind except for those interests referenced in subsection (b) of Code Section 48-4-79. In the event of purchase by a land bank, the conveying instrument described in subsection (g) of Code Section 48-4-81 shall note the conveyance to the land bank pursuant to this article.

(4) The deed to the land bank shall be executed and delivered to the land bank within 90 days of the sale pursuant to subsection (d) of Code Section 48-4-81.

(5) Notwithstanding any other provision of law, a land bank that is a transferee and holder of tax executions may file petitions of foreclosure pursuant to Article 5 of this chapter on real property located within a jurisdiction that has authorized the ad valorem tax foreclosure process contained in Article 5 of this chapter. In a petition of foreclosure pursuant to Article 5 of this chapter, a land bank is authorized to combine in a single petition multiple tracts of real property, and the court may order in a single final judgment that all or part of the real properties identified in the petition be sold to the

land bank free and clear of all liens and encumbrances so long as the petition and accompanying affidavits provide:

(A) Identification of each tract of real property;

(B) The identities of all parties having an interest in each respective tract of property;

(C) The amount of the tax lien due and owing; and

(D) The nature of the notice of the proposed sale provided to such interested parties. (Code 1981, § 48-4-112, enacted by Ga. L. 2012, p. 1055, § 2/SB 284.)

CHAPTER 5

AD VALOREM TAXATION OF PROPERTY

Article 1

General Provisions

Article 2

Property Tax Exemptions and Deferral

Part 1

Tax Exemptions

ARTICLE 1

GENERAL PROVISIONS

48-5-2. Definitions.

As used in this chapter, the term:

(.1) "Arm's length, bona fide sale" means a transaction which has occurred in good faith without fraud or deceit carried out by unrelated or unaffiliated parties, as by a willing buyer and a willing seller, each acting in his or her own self-interest, including but not limited to a distress sale, short sale, bank sale, or sale at public auction.

(1) "Current use value" of bona fide conservation use property means the amount a knowledgeable buyer would pay for the property with the intention of continuing the property in its existing use and in an arm's length, bona fide sale and shall be determined in accordance with the specifications and criteria provided for in subsection (b) of Code Section 48-5-269.

(2) "Current use value" of bona fide residential transitional property means the amount a knowledgeable buyer would pay for the property with the intention of continuing the property in its existing use and in an arm's length, bona fide sale. The tax assessor shall consider the following criteria, as applicable, in determining the current use value of bona fide residential transitional property:

(A) The current use of such property;

(B) Annual productivity; and

(C) Sales data of comparable real property with and for the same existing use.

(3) "Fair market value of property" means the amount a knowledgeable buyer would pay for the property and a willing seller would accept for the property at an arm's length, bona fide sale. The income approach, if data is available, shall be considered in determining the fair market value of income-producing property. Notwithstanding any other provision of this chapter to the contrary, the transaction amount of the most recent arm's length, bona fide sale in any year shall be the maximum allowable fair market value for the next taxable year. With respect to the valuation of equipment, machinery, and fixtures when no ready market exists for the sale of the equipment, machinery, and fixtures, fair market value may be determined by resorting to any reasonable, relevant, and useful information available, including, but not limited to, the original cost of the property, any depreciation or obsolescence, and any increase in value by reason of inflation. Each tax assessor shall have access to any public records of the taxpayer for the purpose of discovering such information.

(A) In determining the fair market value of a going business where its continued operation is reasonably anticipated, the tax assessor may value the equipment, machinery, and fixtures which are the property of the business as a whole where appropriate to reflect the accurate fair market value.

(B) The tax assessor shall apply the following criteria in determining the fair market value of real property:

(i) Existing zoning of property;

(ii) Existing use of property, including any restrictions or limitations on the use of property resulting from state or federal law or rules or regulations adopted pursuant to the authority of state or federal law;

(iii) Existing covenants or restrictions in deed dedicating the property to a particular use;

(iv) Bank sales, other financial institution owned sales, or distressed sales, or any combination thereof, of comparable real property;

(v) Decreased value of the property based on limitations and restrictions resulting from the property being in a conservation easement;

(vi) Rent limitations, operational requirements, and any other restrictions imposed upon the property in connection with the

property being eligible for any income tax credits described in subparagraph (B.1) of this paragraph or receiving any other state or federal subsidies provided with respect to the use of the property as residential rental property; provided, however, that such properties described in subparagraph (B.1) of this paragraph shall not be considered comparable real property for assessment or appeal of assessment of other properties; and

(vii) Any other existing factors provided by law or by rule and regulation of the commissioner deemed pertinent in arriving at fair market value.

(B.1) The tax assessor shall not consider any income tax credits with respect to real property which are claimed and granted pursuant to either Section 42 of the Internal Revenue Code of 1986, as amended, or Chapter 7 of this title in determining the fair market value of real property.

(B.2) In determining the fair market value of real property, the tax assessor shall not include the value of any intangible assets used by a business, wherever located, including patents, trademarks, trade names, customer agreements, and merchandising agreements.

(C) Fair market value of "historic property" as such term is defined in subsection (a) of Code Section 48-5-7.2 means:

(i) For the first eight years in which the property is classified as "rehabilitated historic property," the value equal to the greater of the acquisition cost of the property or the appraised fair market value of the property as recorded in the county tax digest at the time preliminary certification on such property was received by the county board of tax assessors pursuant to subsection (c) of Code Section 48-5-7.2;

(ii) For the ninth year in which the property is classified as "rehabilitated historic property," the value of the property as determined by division (i) of this subparagraph plus one-half of the difference between such value and the current fair market value exclusive of the provisions of this subparagraph; and

(iii) For the tenth and following years, the fair market value of such property as determined by the provisions of this paragraph, excluding the provisions of this subparagraph.

(D) Fair market value of "landmark historic property" as such term is defined in subsection (a) of Code Section 48-5-7.3 means:

(i) For the first eight years in which the property is classified as "landmark historic property," the value equal to the greater of

the acquisition cost of the property or the appraised fair market value of the property as recorded in the county tax digest at the time certification on such property was received by the county board of tax assessors pursuant to subsection (c) of Code Section 48-5-7.3;

(ii) For the ninth year in which the property is classified as "landmark historic property," the value of the property as determined by division (i) of this subparagraph plus one-half of the difference between such value and the current fair market value exclusive of the provisions of this subparagraph; and

(iii) For the tenth and following years, the fair market value of such property as determined by the provisions of this paragraph, excluding the provisions of this subparagraph.

(E) Timber shall be valued at its fair market value at the time of its harvest or sale in the manner specified in Code Section 48-5-7.5.

(F) Fair market value of "brownfield property" as such term is defined in subsection (a) of Code Section 48-5-7.6 means:

(i) Unless sooner disqualified pursuant to subsection (e) of Code Section 48-5-7.6, for the first ten years in which the property is classified as "brownfield property," or as this period of preferential assessment may be extended pursuant to subsection (o) of Code Section 48-5-7.6, the value equal to the lesser of the acquisition cost of the property or the appraised fair market value of the property as recorded in the county tax digest at the time application was made to the Environmental Protection Division of the Department of Natural Resources for participation under Article 9 of Chapter 8 of Title 12, the "Georgia Hazardous Site Reuse and Redevelopment Act," as amended; and

(ii) Unless sooner disqualified pursuant to subsection (e) of Code Section 48-5-7.6, for the eleventh and following years, or at the end of any extension of this period of preferential assessment pursuant to subsection (o) of Code Section 48-5-7.6, the fair market value of such property as determined by the provisions of this paragraph, excluding the provisions of this subparagraph.

(4) "Foreign merchandise in transit" means personal property of any description which has been or will be moved by waterborne commerce through any port located in this state and:

(A) Which has entered the export stream, although temporarily stored or warehoused in the county where the port of export is located; or

(B) Which was shipped from a point of origin located outside the customs territory of the United States and on which United States

customs duties are paid at or through any customs district or port located in this state, although stored or warehoused in the county where the port of entry is located while in transit to a final destination.

(5) "Forest land conservation value" of forest land conservation use property means the amount determined in accordance with the specifications and criteria provided for in Code Section 48-5-271 and Article VII, Section I, Paragraph III(f) of the Constitution.

(6) "Forest land fair market value" means the 2008 fair market value of the forest land; provided, however, that when the 2008 fair market value of the forest land has been appealed by a property owner and the ultimate fair market value of the forest land is changed in the appeal process by either the board of assessors, the board of equalization, a hearing officer, an arbitrator, or a superior court judge, then the final fair market value of the forest land shall replace the 2008 fair market value of the forest land. This final fair market value of the forest land shall be used in the calculation of local assistance grants. If local assistance grants have been granted to either a county, a county board of education, or a municipality based on the 2008 fair market value of forest land and subsequently the fair market value of such forest land is reduced on an appeal, then the county or the municipality shall reimburse the state, within 12 months unless otherwise agreed to by the parties, the difference between local assistance grants paid to the county or municipality and the amount which would have been due based on the final fair market value of the forest land. Such 2008 valuation may increase from one taxable year to the next by a rate equal to the percentage change in the price index for gross output of state and local government from the prior year to the current year as defined by the National Income and Product Accounts and determined by the United States Bureau of Economic Analysis and indicated by the Price Index for Government Consumption Expenditures and General Government Gross Output (Table 3.10.4). (Ga. L. 1909, p. 36, § 22; Civil Code 1910, § 1004; Code 1933, § 92-5702; Ga. L. 1968, p. 358, § 1; Ga. L. 1969, p. 980, § 2; Ga. L. 1975, p. 96, § 1; Ga. L. 1978, p. 1950, § 1; Code 1933, § 91A-1001, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 17; Ga. L. 1983, p. 716, § 1; Ga. L. 1989, p. 1585, § 1; Ga. L. 1990, p. 1122, § 1; Ga. L. 1990, p. 1869, § 1; Ga. L. 1991, p. 1903, § 2; Ga. L. 1992, p. 1008, § 1; Ga. L. 2001, p. 1098, § 1; Ga. L. 2003, p. 170, § 1; Ga. L. 2008, p. 297, § 1/HB 1211; Ga. L. 2009, p. 27, § 1/SB 55; Ga. L. 2010, p. 1104, §§ 5-1, 5-2, 5-3, 5-4/SB 346; Ga. L. 2012, p. 843, § 3/HB 1102; Ga. L. 2014, p. 672, § 1/HB 755; Ga. L. 2014, p. 820, § 1/HB 954.)

The 2012 amendment, effective May 1, 2012, in division (3)(F)(i), inserted "or as this period of preferential assessment may be extended pursuant to subsection (o) of Code Section 48-5-7.6," near the beginning, substituted "the Georgia Hazardous Site Reuse and Redevelopment Act" for "the Hazardous Sites Reuse and Redevelopment Act", and added "and" at the end; and inserted "or at the end of any extension of this period of preferential assessment pursuant to subsection (o) of Code Section 48-5-7.6," near the middle in division (3)(F)(ii).

The 2014 amendments. — The first 2014 amendment, effective July 1, 2014, in paragraph (6), added the proviso at the end of the first sentence and added the second and third sentences. The second 2014 amendment, effective July 1, 2014, deleted "and" from the end of division (3)(B)(v), added present division (3)(B)(vi), and redesignated former division (3)(B)(vi) as division (3)(B)(vii).

Law reviews. — For annual survey on real property, see 66 Mercer L. Rev. 151 (2014).

JUDICIAL DECISIONS

Analysis

General Consideration

General Consideration

Construction of O.C.G.A. § 48-5-2(3) with local constitutional amendment. — Trial court properly determined that no conflict existed between a local constitutional amendment (LCA) and O.C.G.A. § 48-5-2(3) because the statute focused on the market-determined value of property on the actual date the property was acquired, rather than the property's value as much as a year later and was entirely consistent with the LCA, which froze the ad valorem tax value of homestead property in the county at the property's fair market value at the start of the year after a homestead exemption was allowed or after ownership of the property changed. Columbus Bd. of Tax Assessors v. Yeoman, 293 Ga. 107, 744 S.E.2d 18 (2013).

"Bona fide sale" included sale by Freddie Mac at a loss. — Trial court erred in concluding that a 2011 sale of taxable property by Freddie Mac did not qualify as an arm's length, bona fide sale for purposes of limiting the assessment value of the property in the next year under O.C.G.A. § 48-5-2(3); O.C.G.A. § 48-5-2(.1) expressly defined a bona fide sale to include distress transactions. CPF Invs., LLLP v. Fulton County Bd. of Assessors, 330 Ga. App. 744, 769 S.E.2d 159 (2015).

48-5-3. Taxable property.

Law reviews. — For comment, "Making Debt Pay: Examining the Use of Property Tax Delinquency as a Revenue Source," see 62 Emory L.J. 217 (2012).

JUDICIAL DECISIONS

Analysis

General Consideration

General Consideration

No application to understanding of transfer tax. — Because Georgia's ad valorem taxation scheme is contained in its own chapter, entirely separate from the chapter that describes the real estate transfer tax, the definition of taxable property in O.C.G.A. § 48-5-3 did not support an argument regarding the nature of the transfer tax in O.C.G.A. § 48-6-1 et seq. Athens-Clarke County Unified Gov't v. Fed. Hous. Fin. Agency, No. 5:12-CV-355

(MTT), 2013 U.S. Dist. LEXIS 68225 (M.D. Ga. May 14, 2013).

Cited in Muscogee County Bd. of Tax Assessors v. Pace Indus., 307 Ga. App. 532, 705 S.E.2d 678 (2011).

48-5-4. Ad valorem taxation of property of federal corporations and agencies.

JUDICIAL DECISIONS

City was not a local authority. — In a declaration suit, a city was properly determined not to be a local authority as that term is used in O.C.G.A. § 48-13-13(5) and, thus, was subject to the levy of occupation taxes by another municipality for the city's proprietary operations at its airport, which was in the other municipality's city limits, because the terms local authority and municipality were not the same under the statute. City of Atlanta v. City of College Park, 292 Ga. 741, 741 S.E.2d 147 (2013).

48-5-7. Assessment of tangible property.

JUDICIAL DECISIONS

Court erred by failing to make necessary findings as to business operated on property. — Trial court erred by holding that operating a commercial grain business on property designated conservation use property under O.C.G.A. § 48-5-7.4 did not constitute a breach of the conservation use covenant because the court failed to make any findings as to whether the grain business was incidental and not detrimental to the qualifying use of the property. Terrell County Bd. of Tax Assessors v. Goolsby, 324 Ga. App. 535, 751 S.E.2d 158 (2013).

Mandamus relief properly denied since certification of appeals obtained. — Trial court did not err by denying a group of property owners their request for mandamus relief in the nature of finding that the county board of tax assessors certified their property tax appeals because it was undisputed that the tax appeals were physically delivered to the trial court and that it had ruled that such appeals were certified to it, thus, the property owners received the relief sought regarding certification. Newton Timber Co., L.L.L.P. v. Monroe County Bd. of Tax Assessors, 755 S.E.2d 770 (2014).

48-5-7.2. Certification as rehabilitated historic property for purposes of preferential assessment.

(a)(1) For the purposes of this article, "rehabilitated historic property" means tangible real property which:

(A) Qualifies for listing on the Georgia Register of Historic Places as provided in Part 1 of Article 3 of Chapter 3 of Title 12;

(B) Is in the process of or has been substantially rehabilitated, provided that in the case of owner occupied residential real property the rehabilitation has increased the fair market value of the building or structure by not less than 50 percent, or, in the case

of income-producing real property, the rehabilitation has increased the fair market value of the building or structure by not less than 100 percent, or, in the case of real property used primarily as residential property but partially as income-producing property, the rehabilitation has increased the fair market value of the building or structure by not less than 75 percent, provided that the exact percentage of such increase in the fair market value to be required shall be determined by rules and regulations promulgated by the Board of Natural Resources. For the purposes of this subparagraph, the term "fair market value" shall mean the fair market value of the property, excluding the provisions of subparagraph (C) of paragraph (3) of Code Section 48-5-2;

(C) The rehabilitation of which meets the rehabilitation standards as provided in regulations promulgated by the Department of Natural Resources; and

(D) Has been certified by the Department of Natural Resources as rehabilitated historic property eligible for preferential assessment.

(2) The preferential classification and assessment of rehabilitated historic property provided for in this Code section shall apply to the building or structure which is the subject of the rehabilitation, the real property on which the building or structure is located, and not more than two acres of real property surrounding the building or structure. The remaining property shall be assessed for tax purposes as otherwise provided by law.

(3) Property may qualify as historic property only if substantial rehabilitation of such property was initiated after January 1, 1989, and only property which has been certified as rehabilitated historic property by the Department of Natural Resources after July 1, 1989, may qualify for preferential assessment.

(b) In order for property to qualify for preferential assessment as provided for in subsection (c) of Code Section 48-5-7, the property must receive certification as rehabilitated historic property as defined in paragraph (1) of subsection (a) of this Code section and pursuant to regulations promulgated by the Department of Natural Resources. Applications for certification of such property shall be accompanied by a fee specified by rules and regulations of the Board of Natural Resources. The Department of Natural Resources may, at its discretion, delegate its responsibilities conferred under subparagraph (a)(1)(C) of this Code section.

(c) Upon a property owner's receiving preliminary certification pursuant to the provisions of subsection (b) of this Code section, such property owner shall submit a copy of such preliminary certification to

the county board of tax assessors. A property owner shall have 24 months from the date that preliminary certification is received pursuant to subsection (b) of this Code section in which to complete the rehabilitation of such property in conformity with the application approved by the Department of Natural Resources. After receiving the preliminary certification from the property owner, the county board of tax assessors shall not increase the assessed value of such property during the period of rehabilitation of such property, not to exceed two years. During such period of rehabilitation of the property, the county tax receiver or tax commissioner shall enter upon the tax digest a notation that the property is subject to preferential assessment and shall also enter an assessment of the fair market value of the property, excluding the preferential assessment authorized by this Code section. Any taxes not paid on the property as a result of the preliminary certification and frozen assessed value of the property shall be considered deferred until a final determination is made as to whether such property qualifies for preferential assessment as provided in this Code section.

(d) Upon the completion of the rehabilitation of such property, the property owner shall submit a request in writing for final certification to the Department of Natural Resources. The Department of Natural Resources shall determine whether such property as rehabilitated constitutes historic property which will be listed on the Georgia Register of Historic Places and which qualifies for preferential assessment. The Department of Natural Resources shall issue to the property owner a final certification if such property so qualifies.

(e) Upon receipt of final certification from the Department of Natural Resources, a property owner desiring classification of any such historic property as rehabilitated historic property in order to receive the preferential assessment shall make application to the county board of tax assessors and include the order of final certification with such application. The county board of tax assessors shall determine if the value of the building or structure has been increased in accordance with the provisions of subparagraph (a)(1)(B) of this Code section; provided, however, that, if the property owner can document expenditures on rehabilitation of owner occupied property of not less than 50 percent of the fair market value of the building or structure at the time of the preliminary certification of the property, or, in the case of income-producing property, expenditures on rehabilitation of such property of not less than 100 percent of the fair market value of the building or structure at the time of preliminary certification of the property, or, in the case of real property used primarily as residential property but partially as income-producing property, expenditures on rehabilitation of such property of not less than 75 percent of the fair market value of the building or structure at the time of preliminary

certification of the property, the county board of tax assessors shall be required to grant preferential assessment to such property. For the purposes of this subsection, the term "fair market value" shall mean the fair market value of the building or structure, excluding the provisions of subparagraph (C) of paragraph (3) of Code Section 48-5-2; and such rehabilitation expenditures shall also include expenditures incurred in preserving specimen trees upon not more than two acres of real property surrounding the building or structure. As used in this Code section, the term "specimen tree" means any tree having a trunk diameter of 30 inches or more. The county board of tax assessors shall make the determination within 30 days after receiving the application and shall notify the applicant in the same manner that notices of assessment are given pursuant to Code Section 48-5-306. Appeals from the denial of an application for preferential assessment by the board of tax assessors shall be made in the same manner that other property tax appeals are made pursuant to Code Section 48-5-311.

(f) A property owner who fails to have property classified as rehabilitated historic property and listed on the Georgia Register of Historic Places for the preferential assessment shall be required to pay the difference between the amount of taxes on the property during the period that the assessment was frozen pursuant to the provisions of subsection (c) of this Code section and the amount of taxes which would have been due had the property been assessed at the regular fair market value, plus interest at the rate prescribed in Code Section 48-2-40.

(g)(1) Property which has been classified by the county board of tax assessors as rehabilitated historic property shall be eligible for the preferential assessment provided for in subsection (c) of Code Section 48-5-7; provided, however, that, for the purposes of determining the years of eligibility for preferential assessment, the tax year following the year in which the preliminary certification was filed with the county board of tax assessors pursuant to subsection (c) of this Code section shall be considered and counted as the first year of eligibility.

(2) Property which is subject to preferential assessment shall be separately classified from all other property on the tax digest; and such separate classification shall be such as will enable any person examining the tax digest to ascertain readily that the property is subject to preferential assessment.

(3) The county tax receiver or tax commissioner shall enter upon the tax digest as the basis or value of a parcel of rehabilitated historic property a value equal to the greater of the acquisition cost of the property or the assessment of the fair market value of the property as recorded in the county tax digest at the time preliminary certification on such property was received by the county board of tax assessors

pursuant to subsection (c) of this Code section. Property classified as rehabilitated historic property shall be recorded upon the tax digest as provided in this Code section for nine consecutive assessment years, and the notation "rehabilitated historic property" shall be entered on the tax digest adjacent to the valuation of such property to indicate that the property is being preferentially assessed. The tax commissioner or tax receiver shall also enter upon the tax digest an assessment of the fair market value of the property each year, excluding the provisions of subparagraph (C) of paragraph (3) of Code Section 48-5-2.

(h) When property has once been classified and assessed as rehabilitated historic property, it shall remain so classified and be granted the special assessment until the property becomes disqualified by any one of the following:

(1) Written notice by the taxpayer to the county tax commissioner or receiver to remove the preferential classification and assessment;

(2) Sale or transfer of ownership making the property exempt from property taxation;

(3) Decertification of such property by the Department of Natural Resources. The Department of Natural Resources has the authority to decertify any property which no longer possesses the qualities and features which made it eligible for the Georgia Register of Historic Places or which has been altered through inappropriate rehabilitation as determined by the Department of Natural Resources. The sale or transfer to a new owner shall not operate to disqualify the property from preferential classification and assessment so long as the property continues to qualify as rehabilitated historic property. When for any reason the property or any portion thereof ceases to qualify as rehabilitated historic property, the owner at the time of change shall notify the Department of Natural Resources and the county board of tax assessors prior to the next January; or

(4) The expiration of nine years during which the property was classified and assessed as rehabilitated historic property; provided, however, that any such property may qualify thereafter as rehabilitated historic property if such property is subject to subsequent rehabilitation and qualifies under the provisions of this Code section.

(i) Any person who is aggrieved or adversely affected by any order or action of the Department of Natural Resources pursuant to this Code section shall, upon petition within 30 days after the issuance of such order or taking of such action, have a right to a hearing before an administrative law judge appointed by the Board of Natural Resources. The hearing before the administrative law judge shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative

Procedure Act." The decision of the administrative law judge shall constitute the final decision of the board and any party to the hearing, including the Department of Natural Resources, shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(j)(1) The taxes and interest deferred pursuant to this Code section shall constitute a prior lien and shall attach as of the date and in the same manner and shall be collected as are other liens for taxes, as provided for under this title, but the deferred taxes and interest shall only be due, payable, and delinquent as provided in this Code section.

(2) Liens for taxes deferred under this Code section, except for any lien covering the then current tax year, shall not be divested by an award for year's support authorized pursuant to former Chapter 5 of Title 53 as such existed on December 31, 1997, if applicable, or Chapter 3 of Title 53. (Code 1981, § 48-5-7.2, enacted by Ga. L. 1989, p. 1585, § 3; Ga. L. 1992, p. 6, § 48; Ga. L. 1998, p. 128, § 48; Ga. L. 2000, p. 775, § 1; Ga. L. 2011, p. 752, § 48/HB 142.)

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted "former Chapter 5 of Title 53 as such existed on December 31, 1997, if applicable, or Chapter 3 of Title 53." for "Chapter 5 of Title 53 of the 'Pre-1998 Probate Code,' if applicable, or Chapter 3 of Title 53 of the 'Revised Probate Code of 1998.'" in paragraph (j)(2).

48-5-7.3. Landmark historic property.

(a)(1) For the purposes of this Code section, "landmark historic property" means tangible real property which:

(A) Has been listed on the National Register of Historic Places or on the Georgia Register of Historic Places as provided in Part 1 of Article 3 of Chapter 3 of Title 12 and has been so certified by the Department of Natural Resources; and

(B) Has been certified by a local government as landmark historic property having exceptional architectural, historic, or cultural significance pursuant to a comprehensive local historic preservation or landmark ordinance which is of general application within such locality and has been approved as such by the state historic preservation officer.

(2) The preferential classification and assessment of landmark historic property provided for in this Code section shall apply to the building or structure which is listed on the National Register of Historic Places or on the Georgia Register of Historic Places, the real property on which the building or structure is located, and not more than two acres of real property surrounding the building or structure.

The remaining property shall be assessed for tax purposes as otherwise provided by law.

(3) Property may qualify as landmark historic property and be eligible to receive the preferential assessment provided for in this Code section only if the local governing authority has adopted an ordinance authorizing such preferential assessments for landmark historic property under this Code section. Notwithstanding any other provision of this paragraph, said ordinances may extend the preferential assessment authorized by this Code section to tangible income-producing real property, tangible nonincome-producing real property, or combination thereof, so as to encourage the preservation of historic properties and assist in the revitalization of historic areas.

(b) In order for property to qualify under this Code section for preferential assessment as provided for in subsection (c.1) of Code Section 48-5-7, the property must receive the certifications required for landmark historic property as defined in paragraph (1) of subsection (a) of this Code section.

(c) Upon receipt of said certifications, a property owner desiring classification of any such historic property as landmark historic property in order to receive the preferential assessment shall make application to the county board of tax assessors and include said certifications with such application. The county board of tax assessors shall determine if the provisions of this Code section have been complied with and upon such determination, the county board of tax assessors shall be required to grant preferential assessment to such property. The county board of tax assessors shall make the determination within 30 days after receiving the application and shall notify the applicant in the same manner that notices of assessment are given pursuant to Code Section 48-5-306. Appeals from the denial of an application for preferential assessment by the board of tax assessors shall be made in the same manner that other property tax appeals are made pursuant to Code Section 48-5-311.

(d)(1) Property which has been classified by the county board of tax assessors as landmark historic property shall be immediately eligible for the preferential assessment provided for in subsection (c.1) of Code Section 48-5-7; provided, however, that, for the purposes of determining the years of eligibility for preferential assessment, the tax year following the year in which the certification was filed with the county board of tax assessors pursuant to subsection (c) of this Code section shall be considered and counted as the first year of eligibility.

(2) Property which is subject to preferential assessment shall be separately classified from all other property on the tax digest; and

such separate classification shall be such as will enable any person examining the tax digest to ascertain readily that the property is subject to preferential assessment.

(3) The county tax receiver or tax commissioner shall enter upon the tax digest as the basis or value of a parcel of landmark historic property a value equal to the greater of the acquisition cost of the property or the assessment of the fair market value of the property as recorded in the county tax digest at the time certification on such property was received by the county board of tax assessors pursuant to subsection (c) of this Code section. Property classified as landmark historic property shall be recorded upon the tax digest as provided in this Code section for nine consecutive assessment years, and the notation "landmark historic property" shall be entered on the tax digest adjacent to the valuation of such property to indicate that the property is being preferentially assessed. The tax commissioner or tax receiver shall also enter upon the tax digest an assessment of the fair market value of the property each year, excluding the provisions of subparagraph (D) of paragraph (3) of Code Section 48-5-2.

(e)(1) When property has once been classified and assessed as landmark historic property, it shall remain so classified and be granted the special assessment until the property becomes disqualified by any one of the following:

(A) Written notice by the taxpayer to the county tax commissioner or receiver to remove the preferential classification and assessment;

(B) Sale or transfer of ownership making the property exempt from property taxation;

(C) Decertification of such property by the Department of Natural Resources. The Department of Natural Resources has the authority to decertify any property which no longer possesses the qualities and features which made it eligible for the Georgia Register of Historic Places or which has been altered through inappropriate rehabilitation as determined by the Department of Natural Resources. The sale or transfer to a new owner shall not operate to disqualify the property from preferential classification and assessment so long as the property continues to qualify as landmark historic property, except as specified in subparagraph (B) of this paragraph. When for any reason the property or any portion thereof ceases to qualify as landmark historic property, the owner at the time of change shall notify the Department of Natural Resources and the county board of tax assessors prior to the next January;

(D) Decertification of such property by the local governing authority for failure to maintain such property in a standard condi-

tion as specified in the local historic preservation or landmark ordinance or in local building codes; or

(E) The expiration of nine years during which the property was classified and assessed as landmark historic property; provided, however, that any such property may qualify thereafter as landmark historic property if such property is subject to subsequent rehabilitation and qualifies under other portions of the historic properties tax incentive program contained within the provisions of this Code section.

(2) Except as otherwise provided in this Code section, if a property becomes disqualified pursuant to any provision of this subsection, the decertification shall be transmitted to the county board of tax assessors and said assessors shall appropriately notate the property as decertified. Such property shall not be eligible to receive the preferential assessment provided for in this Code section during the taxable year in which such disqualification occurs.

(f) Any person who is aggrieved or adversely affected by any order or action of the Department of Natural Resources pursuant to this subsection shall, upon petition within 30 days after the issuance of such order or taking of such action, have a right to a hearing before an administrative law judge appointed by the Board of Natural Resources. The hearing before the administrative law judge shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The decision of the administrative law judge shall constitute the final decision of the board and any party to the hearing, including the Department of Natural Resources, shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(g) No property shall be eligible to receive simultaneously more than one of the preferential assessments provided for in this Code section and Code Section 48-5-7.2.

(h) Any landmark historic property which lies within a locally designated landmark or historic preservation district which is predominantly a residential district as determined by the local governing authority shall not be eligible for the preferential assessment provided for in this subsection if such landmark historic property constitutes a nonconforming use pursuant to applicable local zoning ordinances or if such landmark historic property does not contribute to the architectural, historic, or cultural values for which said district is significant.

(i)(1) The difference between the preferential assessment granted by this Code section and the taxes which would otherwise be assessed and interest thereon shall constitute a prior lien and shall attach as of the date and in the same manner and shall be collected as are other

liens for taxes, as provided for under this title, but shall only be due, payable, and delinquent as provided in this Code section.

(2) Such liens for taxes, except for any lien covering the then current tax year, shall not be divested by an award for year's support authorized pursuant to former Chapter 5 of Title 53 as such existed on December 31, 1997, if applicable, or Chapter 3 of Title 53. (Code 1981, § 48-5-7.3, enacted by Ga. L. 1990, p. 1122, § 3; Ga. L. 1992, p. 6, § 48; Ga. L. 1992, p. 1502, § 1; Ga. L. 1998, p. 128, § 48; Ga. L. 2011, p. 752, § 48/HB 142.)

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted "former Chapter 5 of Title 53 as such existed on December 31, 1997, if applicable, or Chapter 3 of Title 53." for "Chapter 5 of Title 53 of the 'Pre-1998 Probate Code,' if applicable, or Chapter 3 of Title 53 of the 'Revised Probate Code of 1998.'" in paragraph (i)(2).

48-5-7.4. Bona fide conservation use property; residential transitional property; application procedures; penalties for breach of covenant; classification on tax digest; annual report.

(a) For purposes of this article, the term "bona fide conservation use property" means property described in and meeting the requirements of paragraph (1) or (2) of this subsection, as follows:

(1) Not more than 2,000 acres of tangible real property of a single person, the primary purpose of which is any good faith production, including but not limited to subsistence farming or commercial production, from or on the land of agricultural products or timber, subject to the following qualifications:

(A) Such property includes the value of tangible property permanently affixed to the real property which is directly connected to such owner's production of agricultural products or timber and which is devoted to the storage and processing of such agricultural products or timber from or on such real property;

(A.1) In the application of the limitation contained in the introductory language of this paragraph, the following rules shall apply to determine beneficial interests in bona fide conservation use property held in a family owned farm entity as described in division (1)(C)(iv) of this subsection:

(i) A person who owns an interest in a family owned farm entity as described in division (1)(C)(iv) of this subsection shall be considered to own only the percent of the bona fide conservation use property held by such family owned farm entity that is equal to the percent interest owned by such person in such family owned farm entity; and

(ii) A person who owns an interest in a family owned farm entity as described in division (1)(C)(iv) of this subsection may elect to allocate the lesser of any unused portion of such person's 2,000 acre limitation or the product of such person's percent interest in the family owned farm entity times the total number of acres owned by the family owned farm entity subject to such bona fide conservation use assessment, with the result that the family owned farm entity may receive bona fide conservation use assessment on more than 2,000 acres;

(B) Such property excludes the entire value of any residence and its underlying property; as used in this subparagraph, the term "underlying property" means the minimum lot size required for residential construction by local zoning ordinances or two acres, whichever is less. This provision for excluding the underlying property of a residence from eligibility in the conservation use covenant shall only apply to property that is first made subject to a covenant or is subject to the renewal of a previous covenant on or after May 1, 2012;

(C) Except as otherwise provided in division (vii) of this subparagraph, such property must be owned by:

(i) One or more natural or naturalized citizens;

(ii) An estate of which the devisees or heirs are one or more natural or naturalized citizens;

(iii) A trust of which the beneficiaries are one or more natural or naturalized citizens;

(iv) A family owned farm entity, such as a family corporation, a family partnership, a family general partnership, a family limited partnership, a family limited corporation, or a family limited liability company, all of the interest of which is owned by one or more natural or naturalized citizens related to each other by blood or marriage within the fourth degree of civil reckoning, except that, solely with respect to a family limited partnership, a corporation, limited partnership, limited corporation, or limited liability company may serve as a general partner of the family limited partnership and hold no more than a 5 percent interest in such family limited partnership, an estate of which the devisees or heirs are one or more natural or naturalized citizens, or a trust of which the beneficiaries are one or more natural or naturalized citizens and which family owned farm entity derived 80 percent or more of its gross income from bona fide conservation uses, including earnings on investments directly related to past or future bona fide conservation uses, within this state within the year immediately preceding the year in which eligibility is

sought; provided, however, that in the case of a newly formed family farm entity, an estimate of the income of such entity may be used to determine its eligibility;

(v) A bona fide nonprofit conservation organization designated under Section 501(c)(3) of the Internal Revenue Code;

(vi) A bona fide club organized for pleasure, recreation, and other nonprofitable purposes pursuant to Section 501(c)(7) of the Internal Revenue Code; or

(vii) In the case of constructed storm-water wetlands, any person may own such property;

(D) Factors which may be considered in determining if such property is qualified may include, but not be limited to:

(i) The nature of the terrain;

(ii) The density of the marketable product on the land;

(iii) The past usage of the land;

(iv) The economic merchantability of the agricultural product; and

(v) The utilization or nonutilization of recognized care, cultivation, harvesting, and like practices applicable to the product involved and any implemented plans thereof;

(E) Such property shall, if otherwise qualified, include, but not be limited to, property used for:

(i) Raising, harvesting, or storing crops;

(ii) Feeding, breeding, or managing livestock or poultry;

(iii) Producing plants, trees, fowl, or animals, including without limitation the production of fish or wildlife by maintaining not less than ten acres of wildlife habitat either in its natural state or under management, which shall be deemed a type of agriculture; provided, however, that no form of commercial fishing or fish production shall be considered a type of agriculture; or

(iv) Production of aquaculture, horticulture, floriculture, forestry, dairy, livestock, poultry, and apiarian products; and

(F) The primary purpose described in this paragraph includes land conservation and ecological forest management in which commercial production of wood and wood fiber products may be undertaken primarily for conservation and restoration purposes rather than financial gain; or

(2) Not more than 2,000 acres of tangible real property, excluding the value of any improvements thereon, of a single owner of the types of environmentally sensitive property specified in this paragraph and certified as such by the Department of Natural Resources, if the primary use of such property is its maintenance in its natural condition or controlling or abating pollution of surface or ground waters of this state by storm-water runoff or otherwise enhancing the water quality of surface or ground waters of this state and if such owner meets the qualifications of subparagraph (C) of paragraph (1) of this subsection:

(A) Environmentally sensitive areas, including any otherwise qualified land area 1,000 feet or more above the lowest elevation of the county in which such area is located that has a percentage slope, which is the difference in elevation between two points 500 feet apart on the earth divided by the horizontal distance between those two points, of 25 percent or greater and shall include the crests, summits, and ridge tops which lie at elevations higher than any such area;

(B) Wetland areas that are determined by the United States Army Corps of Engineers to be wetlands under their jurisdiction pursuant to Section 404 of the federal Clean Water Act, as amended, or wetland areas that are depicted or delineated on maps compiled by the Department of Natural Resources or the United States Fish and Wildlife Service pursuant to its National Wetlands Inventory Program;

(C) Significant ground-water recharge areas as identified on maps or data compiled by the Department of Natural Resources;

(D) Undeveloped barrier islands or portions thereof as provided for in the federal Coastal Barrier Resources Act, as amended;

(E) Habitats as certified by the Department of Natural Resources as containing species that have been listed as either endangered or threatened under the federal Endangered Species Act of 1973, as amended;

(F) River or stream corridors or buffers which shall be defined as those undeveloped lands which are:

(i) Adjacent to rivers and perennial streams that are within the 100 year flood plain as depicted on official maps prepared by the Federal Emergency Management Agency; or

(ii) Within buffer zones adjacent to rivers or perennial streams, which buffer zones are established by law or local ordinance and within which land-disturbing activity is prohibited; or

(G)(i) Constructed storm-water wetlands of the free-water surface type certified by the Department of Natural Resources under subsection (k) of Code Section 12-2-4 and approved for such use by the local governing authority.

(ii) No property shall maintain its eligibility for current use assessment as a bona fide conservation use property as defined in this subparagraph unless the owner of such property files an annual inspection report from a licensed professional engineer certifying that as of the date of such report the property is being maintained in a proper state of repair so as to accomplish the objectives for which it was designed. Such inspection report and certification shall be filed with the county board of tax assessors on or before the last day for filing ad valorem tax returns in the county for each tax year for which such assessment is sought.

(a.1) Notwithstanding any other provision of this Code section to the contrary, in the case of property which otherwise meets the requirements for current use assessment and the qualifying use is pursuant to division (1)(E)(iii) of subsection (a) of this Code section, when the owner seeks to renew the covenant or reenter a covenant subsequent to the termination of a previous covenant which met such requirements and the owner meets the qualifications under this Code section but the property is no longer being used for the qualified use for which the previous covenant was entered pursuant to division (1)(E)(iii) of subsection (a) of this Code section, the property is not environmentally sensitive property within the meaning of paragraph (2) of subsection (a) of this Code section, and the primary use of the property is maintenance of a wildlife habitat of not less than ten acres either by maintaining the property in its natural condition or under management, the county board of tax assessors shall be required to accept such use as a qualifying use for purposes of this Code section.

(b) Except in the case of the underlying portion of a tract of real property on which is actually located a constructed storm-water wetlands, the following additional rules shall apply to the qualification of conservation use property for current use assessment:

(1) When one-half or more of the area of a single tract of real property is used for a qualifying purpose, then such tract shall be considered as used for such qualifying purpose unless some other type of business is being operated on the unused portion; provided, however, that such unused portion must be minimally managed so that it does not contribute significantly to erosion or other environmental or conservation problems. The lease of hunting rights or the use of the property for hunting purposes shall not constitute another type of business. The charging of admission for use of the property for fishing purposes shall not constitute another type of business;

(2) The owner of a tract, lot, or parcel of land totaling less than ten acres shall be required by the tax assessor to submit additional relevant records regarding proof of bona fide conservation use for qualified property that on or after May 1, 2012, is either first made subject to a covenant or is subject to a renewal of a previous covenant. If the owner of the subject property provides proof that such owner has filed with the Internal Revenue Service a Schedule E, reporting farm related income or loss, or a Schedule F, with Form 1040, or, if applicable, a Form 4835, pertaining to such property, the provisions of this paragraph, requiring additional relevant records regarding proof of bona fide conservation use, shall not apply to such property. Prior to a denial of eligibility under this paragraph, the tax assessor shall conduct and provide proof of a visual on-site inspection of the property. Reasonable notice shall be provided to the property owner before being allowed a visual, on-site inspection of the property by the tax assessor;

(3) No property shall qualify as bona fide conservation use property if such current use assessment would result in any person who has a beneficial interest in such property, including any interest in the nature of stock ownership, receiving in any tax year any benefit of current use assessment as to more than 2,000 acres. If any taxpayer has any beneficial interest in more than 2,000 acres of tangible real property which is devoted to bona fide conservation uses, such taxpayer shall apply for current use assessment only as to 2,000 acres of such land;

(4) No property shall qualify as bona fide conservation use property if it is leased to a person or entity which would not be entitled to conservation use assessment;

(5) No property shall qualify as bona fide conservation use property if such property is at the time of application for current use assessment subject to a restrictive covenant which prohibits the use of the property for the specific purpose described in subparagraph (a)(1)(E) of this Code section for which bona fide conservation use qualification is sought; and

(6) No otherwise qualified property shall be denied current use assessment on the grounds that no soil map is available for the county in which such property is located; provided, however, that if no soil map is available for the county in which such property is located, the owner making an application for current use assessment shall provide the board of tax assessors with a certified soil survey of the subject property unless another method for determining the soil type of the subject property is authorized in writing by such board.

(c) For purposes of this article, the term "bona fide residential transitional property" means not more than five acres of tangible real

property of a single owner which is private single-family residential owner occupied property located in a transitional developing area. Such classification shall apply to all otherwise qualified real property which is located in an area which is undergoing a change in use from single-family residential use to agricultural, commercial, industrial, office-institutional, multifamily, or utility use or a combination of such uses. Change in use may be evidenced by recent zoning changes, purchase by a developer, affidavits of intent, or close proximity to property which has undergone a change from single-family residential use. To qualify as residential transitional property, the valuation must reflect a change in value attributable to such property's proximity to or location in a transitional area.

(d) No property shall qualify for current use assessment under this Code section unless and until the owner of such property agrees by covenant with the appropriate taxing authority to maintain the eligible property in bona fide qualifying use for a period of ten years beginning on the first day of January of the year in which such property qualifies for such current use assessment and ending on the last day of December of the final year of the covenant period. After the owner has applied for and has been allowed current use assessment provided for in this Code section, it shall not be necessary to make application thereafter for any year in which the covenant period is in effect and current use assessment shall continue to be allowed such owner as specified in this Code section. At least 60 days prior to the expiration date of the covenant, the county board of tax assessors shall send by first-class mail written notification of such impending expiration. Upon the expiration of any covenant period, the property shall not qualify for further current use assessment under this Code section unless and until the owner of the property has entered into a renewal covenant for an additional period of ten years; provided, however, that the owner may enter into a renewal contract in the ninth year of a covenant period so that the contract is continued without a lapse for an additional ten years.

(e) A single owner shall be authorized to enter into more than one covenant under this Code section for bona fide conservation use property, provided that the aggregate number of acres of qualified property of such owner to be entered into such covenants does not exceed 2,000 acres. Any such qualified property may include a tract or tracts of land which are located in more than one county. A single owner shall be authorized to enter qualified property in a covenant for bona fide conservation use purposes and to enter simultaneously the residence located on such property in a covenant for bona fide residential transitional use if the qualifications for each such covenant are met. A single owner shall be authorized to enter qualified property in a covenant for bona fide conservation use purposes and to enter other qualified property of such owner in a covenant for bona fide residential transitional use.

(f) An owner shall not be authorized to make application for and receive current use assessment under this Code section for any property which at the time of such application is receiving preferential assessment under Code Section 48-5-7.1 except that such owner shall be authorized to change such preferential assessment covenant in the manner provided for in subsection (s) of Code Section 48-5-7.1.

(g) Except as otherwise provided in this subsection, no property shall maintain its eligibility for current use assessment under this Code section unless a valid covenant remains in effect and unless the property is continuously devoted to an applicable bona fide qualifying use during the entire period of the covenant. An owner shall be authorized to change the type of bona fide qualifying conservation use of the property to another bona fide qualifying conservation use and the penalty imposed by subsection (l) of this Code section shall not apply, but such owner shall give notice of any such change in use to the board of tax assessors.

(h) If any breach of a covenant occurs, the existing covenant shall be terminated and all qualification requirements must be met again before the property shall be eligible for current use assessment under this Code section.

(i)(1) If ownership of all or a part of the property is acquired during a covenant period by a person or entity qualified to enter into an original covenant, then the original covenant may be continued by such acquiring party for the remainder of the term, in which event no breach of the covenant shall be deemed to have occurred.

(2)(A) As used in this paragraph, the term "contiguous" means real property within a county that abuts, joins, or touches and has the same undivided common ownership. If an applicant's tract is divided by a county boundary, public roadway, public easement, public right of way, natural boundary, land lot line, or railroad track, then the applicant has, at the time of the initial application, a one-time election to declare the tract as contiguous irrespective of a county boundary, public roadway, public easement, public right of way, natural boundary, land lot line, or railroad track.

(B) If a qualified owner has entered into an original bona fide conservation use covenant and subsequently acquires additional qualified property contiguous to the property in the original covenant, the qualified owner may elect to enter the subsequently acquired qualified property into the original covenant for the remainder of the ten-year period of the original covenant; provided, however, that such subsequently acquired qualified property shall be less than 50 acres.

(j)(1) All applications for current use assessment under this Code section, including the covenant agreement required under this Code

section, shall be filed on or before the last day for filing ad valorem tax returns in the county for the tax year for which such current use assessment is sought, except that in the case of property which is the subject of a reassessment by the board of tax assessors an application for current use assessment may be filed in conjunction with or in lieu of an appeal of the reassessment. An application for continuation of such current use assessment upon a change in ownership of all or a part of the qualified property shall be filed on or before the last date for filing tax returns in the year following the year in which the change in ownership occurred. Applications for current use assessment under this Code section shall be filed with the county board of tax assessors who shall approve or deny the application. If the application is approved on or after July 1, 1998, the county board of tax assessors shall file a copy of the approved application in the office of the clerk of the superior court in the county in which the eligible property is located. The clerk of the superior court shall file and index such application in the real property records maintained in the clerk's office. Applications approved prior to July 1, 1998, shall be filed and indexed in like manner without payment of any fee. If the application is not so recorded in the real property records, a transferee of the property affected shall not be bound by the covenant or subject to any penalty for its breach. The fee of the clerk of the superior court for recording such applications approved on or after July 1, 1998, shall be paid by the owner of the eligible property with the application for preferential treatment and shall be paid to the clerk by the board of tax assessors when the application is filed with the clerk. If the application is denied, the board of tax assessors shall notify the applicant in the same manner that notices of assessment are given pursuant to Code Section 48-5-306 and shall return any filing fees advanced by the owner. Appeals from the denial of an application by the board of tax assessors shall be made in the same manner that other property tax appeals are made pursuant to Code Section 48-5-311.

(2) In the event such application is approved, the taxpayer shall continue to receive annual notification of any change in the fair market value of such property and any appeals with respect to such valuation shall be made in the same manner as other property tax appeals are made pursuant to Code Section 48-5-311.

(k)(1) The commissioner shall by regulation provide uniform application and covenant forms to be used in making application for current use assessment under this Code section. Such application shall include an oath or affirmation by the taxpayer that he or she is in compliance with the provisions of paragraphs (3) and (4) of subsection (b) of this Code section, if applicable.

(2) The applicable local governing authority shall accept applications for approval of property for purposes of subparagraph (a)(2)(G)

of this Code section and shall certify property to the local board of tax assessors as meeting or not meeting the criteria of such paragraph. The local governing authority shall not certify any property as meeting the criteria of subparagraph (a)(2)(G) of this Code section unless:

(A) The owner has submitted to the local governing authority:

(i) A plat of the tract in question prepared by a licensed land surveyor, showing the location and measured area of such tract;

(ii) A certification by a licensed professional engineer that the specific design used for the constructed storm-water wetland was recommended by the engineer as suitable for such site after inspection and investigation; and

(iii) Information on the actual cost of constructing and estimated cost of operating the storm-water wetland, including without limitation a description of all incorporated materials, machinery, and equipment; and

(B) An authorized employee or agent of the local governing authority has inspected the site before, during, and after construction of the storm-water wetland to determine compliance with the requirements of subparagraph (a)(2)(G) of this Code section.

(k.1) In the case of an alleged breach of the covenant, the owner shall be notified in writing by the board of tax assessors. The owner shall have a period of 30 days from the date of such notice to cease and desist the activity alleged in the notice to be in breach of the covenant or to remediate or correct the condition or conditions alleged in the notice to be in breach of the covenant. Following a physical inspection of property, the board of tax assessors shall notify the owner that such activity or activities have or have not properly ceased or that the condition or conditions have or have not been remediated or corrected. The owner shall be entitled to appeal the decision of the board of tax assessors and file an appeal disputing the findings of the board of tax assessors. Such appeal shall be conducted in the same manner that other property tax appeals are made pursuant to Code Section 48-5-311.

(l) A penalty shall be imposed under this subsection if during the period of the covenant entered into by a taxpayer the covenant is breached. The penalty shall be applicable to the entire tract which is the subject of the covenant and shall be twice the difference between the total amount of tax paid pursuant to current use assessment under this Code section and the total amount of taxes which would otherwise have been due under this chapter for each completed or partially completed year of the covenant period. Any such penalty shall bear interest at the rate specified in Code Section 48-2-40 from the date the covenant is breached.

(m) Penalties and interest imposed under this Code section shall constitute a lien against the property and shall be collected in the same manner as unpaid ad valorem taxes are collected. Such penalties and interest shall be distributed pro rata to each taxing jurisdiction wherein current use assessment under this Code section has been granted based upon the total amount by which such current use assessment has reduced taxes for each such taxing jurisdiction on the property in question as provided in this Code section.

(n) The penalty imposed by subsection (l) of this Code section shall not apply in any case where a covenant is breached solely as a result of:

(1) The acquisition of part or all of the property under the power of eminent domain;

(2) The sale of part or all of the property to a public or private entity which would have had the authority to acquire the property under the power of eminent domain; or

(3) The death of an owner who was a party to the covenant.

(o) The transfer of a part of the property subject to a covenant for a bona fide conservation use shall not constitute a breach of a covenant if:

(1) The part of the property so transferred is used for single-family residential purposes, starting within one year of the date of transfer and continuing for the remainder of the covenant period, and the residence is occupied by a person who is related within the fourth degree of civil reckoning to an owner of the property subject to the covenant; and

(2) The part of the property so transferred, taken together with any other part of the property so transferred to the same relative during the covenant period, does not exceed a total of five acres;

and in any such case the property so transferred shall not be eligible for a covenant for bona fide conservation use, but shall, if otherwise qualified, be eligible for current use assessment as residential transitional property and the remainder of the property from which such transfer was made shall continue under the existing covenant until a terminating breach occurs or until the end of the specified covenant period.

(p) The following shall not constitute a breach of a covenant:

(1) Mineral exploration of the property subject to the covenant or the leasing of the property subject to the covenant for purposes of mineral exploration if the primary use of the property continues to be the good faith production from or on the land of agricultural products;

(2) Allowing all or part of the property subject to the covenant to lie fallow or idle for purposes of any land conservation program, for

purposes of any federal agricultural assistance program, or for other agricultural management purposes;

(3) Allowing all or part of the property subject to the covenant to lie fallow or idle due to economic or financial hardship if the owner notifies the board of tax assessors on or before the last day for filing a tax return in the county where the land lying fallow or idle is located and if such owner does not allow the land to lie fallow or idle for more than two years of any five-year period;

(4)(A) Any property which is subject to a covenant for bona fide conservation use being transferred to a place of religious worship or burial or an institution of purely public charity if such place or institution is qualified to receive the exemption from ad valorem taxation provided for under subsection (a) of Code Section 48-5-41. No person shall be entitled to transfer more than 25 acres of such person's property in the aggregate under this paragraph.

(B) Any property transferred under subparagraph (A) of this paragraph shall not be used by the transferee for any purpose other than for a purpose which would entitle such property to the applicable exemption from ad valorem taxation provided for under subsection (a) of Code Section 48-5-41 or subsequently transferred until the expiration of the term of the covenant period. Any such use or transfer shall constitute a breach of the covenant;

(5) Leasing a portion of the property subject to the covenant, but in no event more than six acres, for the purpose of placing thereon a cellular telephone transmission tower. Any such portion of such property shall cease to be subject to the covenant as of the date of execution of such lease and shall be subject to ad valorem taxation at fair market value;

(6) Allowing all or part of the property subject to the covenant on which a corn crop is grown to be used for the purpose of constructing and operating a maze so long as the remainder of such corn crop is harvested;

(7)(A) Allowing all or part of the property subject to the covenant to be used for agritourism purposes.

(B) As used in this paragraph, the term "agritourism" means charging admission for persons to visit, view, or participate in the operation of a farm or dairy or production of farm or dairy products for entertainment or educational purposes or selling farm or dairy products to persons who visit such farm or dairy;

(8) Allowing all or part of the property which has been subject to a covenant for at least one year to be used as a site for farm weddings; or

(9) Allowing all or part of the property which has been subject to a covenant for at least one year to be used to host not for profit equestrian performance events to which spectator admission is not contingent upon an admission fee but which may charge an entry fee from each participant.

(q) In the following cases, the penalty specified by subsection (l) of this Code section shall not apply and the penalty imposed shall be the amount by which current use assessment has reduced taxes otherwise due for the year in which the covenant is breached, such penalty to bear interest at the rate specified in Code Section 48-2-40 from the date of the breach:

(1) Any case in which a covenant is breached solely as a result of the foreclosure of a deed to secure debt or the property is conveyed to the lienholder without compensation and in lieu of foreclosure, if:

(A) The deed to secure debt was executed as a part of a bona fide commercial loan transaction in which the grantor of the deed to secure debt received consideration equal in value to the principal amount of the debt secured by the deed to secure debt;

(B) The loan was made by a person or financial institution who or which is regularly engaged in the business of making loans; and

(C) The deed to secure debt was intended by the parties as security for the loan and was not intended for the purpose of carrying out a transfer which would otherwise be subject to the penalty specified by subsection (l) of this Code section;

(2) Any case in which a covenant is breached solely as a result of a medically demonstrable illness or disability which renders the owner of the real property physically unable to continue the property in the qualifying use, provided that the board of tax assessors shall require satisfactory evidence which clearly demonstrates that the breach is the result of a medically demonstrable illness or disability;

(3) Any case in which a covenant is breached solely as a result of an owner electing to discontinue the property in its qualifying use, provided such owner has renewed without an intervening lapse at least once the covenant for bona fide conservation use, has reached the age of 65 or older, and has kept the property in a qualifying use under the renewal covenant for at least three years. Such election shall be in writing and shall not become effective until filed with the county board of tax assessors; or

(4) Any case in which a covenant is breached solely as a result of an owner electing to discontinue the property in its qualifying use, provided such owner entered into the covenant for bona fide conservation use for the first time after reaching the age of 67 and has

either owned the property for at least 15 years or inherited the property and has kept the property in a qualifying use under the covenant for at least three years. Such election shall be in writing and shall not become effective until filed with the county board of tax assessors.

(r) Property which is subject to current use assessment under this Code section shall be separately classified from all other property on the tax digest; and such separate classification shall be such as will enable any person examining the tax digest to ascertain readily that the property is subject to current use assessment under this Code section. Covenants shall be public records and shall be indexed and maintained in such manner as will allow members of the public to locate readily the covenant affecting any particular property subject to current use assessment under this Code section. Based on information submitted by the county boards of tax assessors, the commissioner shall maintain a central registry of conservation use property, indexed by owners, so as to ensure that the 2,000 acre limitations of this Code section are complied with on a state-wide basis.

(s) The commissioner shall annually submit a report to the Governor, the Department of Agriculture, the Georgia Agricultural Statistical Service, the State Forestry Commission, the Department of Natural Resources, and the University of Georgia Cooperative Extension Service and the House Ways and Means, Natural Resources and Environment, and Agriculture and Consumer Affairs committees and the Senate Finance, Natural Resources and Environment, and Agriculture and Consumer Affairs committees and shall make such report available to other members of the General Assembly, which report shall show the fiscal impact of the assessments provided for in this Code section and Code Section 48-5-7.5. The report shall include the amount of assessed value eliminated from each county's digest as a result of such assessments; approximate tax dollar losses, by county, to all local governments affected by such assessments; and any recommendations regarding state and local administration of this Code section and Code Section 48-5-7.5, with emphasis upon enforcement problems, if any, attendant with this Code section and Code Section 48-5-7.5. The report shall also include any other data or facts which the commissioner deems relevant.

(t) A public notice containing a brief, factual summary of the provisions of this Code section shall be posted in a prominent location readily viewable by the public in the office of the board of tax assessors and in the office of the tax commissioner of each county in this state.

(u) Reserved.

(v) Reserved.

(w) At such time as the property ceases to be eligible for current use assessment or when any ten-year covenant period expires and the

property does not qualify for further current use assessment, the owner of the property shall file an application for release of current use treatment with the county board of tax assessors who shall approve the release upon verification that all taxes and penalties with respect to the property have been satisfied. After the application for release has been approved by the board of tax assessors, the board shall file the release in the office of the clerk of the superior court in the county in which the original covenant was filed. The clerk of the superior court shall file and index such release in the real property records maintained in the clerk's office. No fee shall be paid to the clerk of the superior court for recording such release. The commissioner shall by regulation provide uniform release forms.

(x) Notwithstanding any other provision of this Code section to the contrary, in any case where a renewal covenant is breached by the original covenantor or a transferee who is related to that original covenantor within the fourth degree by civil reckoning, the penalty otherwise imposed by subsection (l) of this Code section shall not apply if the breach occurs during the sixth through tenth years of such renewal covenant, and the only penalty imposed shall be the amount by which current use assessment has reduced taxes otherwise due for each year in which such renewal covenant was in effect, plus interest at the rate specified in Code Section 48-2-40 from the date the covenant is breached.

(y) The commissioner shall have the power to make and publish reasonable rules and regulations for the implementation and enforcement of this Code section. Without limiting the commissioner's authority with respect to any other such matters, the commissioner may prescribe soil maps and other appropriate sources of information for documenting eligibility as a bona fide conservation use property. The commissioner also may provide that advance notice be given to taxpayers of the intent of a board of tax assessors to deem a change in use as a breach of a covenant.

(z) The governing authority of a county shall not publish or promulgate any information which is inconsistent with the provisions of this chapter. (Code 1981, § 48-5-7.4, enacted by Ga. L. 1991, p. 1903, § 6; Ga. L. 1992, p. 6, § 48; Ga. L. 1993, p. 947, §§ 1-6; Ga. L. 1994, p. 428, §§ 1, 2; Ga. L. 1996, p. 1021, § 1; Ga. L. 1998, p. 553, §§ 3, 4; Ga. L. 1998, p. 574, § 1; Ga. L. 1999, p. 589, § 2; Ga. L. 1999, p. 590, § 1; Ga. L. 1999, p. 656, § 1; Ga. L. 2000, p. 1338, § 1; Ga. L. 2002, p. 1031, §§ 2, 3; Ga. L. 2003, p. 271, § 2; Ga. L. 2003, p. 565, § 1; Ga. L. 2004, p. 360, § 1; Ga. L. 2004, p. 361, § 1; Ga. L. 2004, p. 362, §§ 1, 1A; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2005, p. 222, §§ 1, 2/HB 1; Ga. L. 2006, p. 685, § 1/HB 1293; Ga. L. 2006, p. 819, § 1/HB 1502; Ga. L. 2007, p. 90, § 1/HB 78; Ga. L. 2007, p. 608, § 1/HB 321; Ga. L. 2008, p.

1149, §§ 1, 2, 3/HB 1081; Ga. L. 2012, p. 763, § 1/HB 916; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2013, p. 655, § 1/HB 197; Ga. L. 2013, p. 683, § 1/SB 145.)

The 2012 amendment, effective May 1, 2012, substituted the present provisions of subparagraph (a)(1)(B) for the former provisions, which read: "Such property excludes the entire value of any residence located on the property;"; deleted paragraph (a)(3), which read: "The governing authority of a county in which the property that otherwise meets the requirements for current use assessment is located may establish a minimum number of acres as a condition for qualifying for the current use assessment. Such minimum shall be up to 25 acres and shall apply exclusively to qualified property that is first made subject to a covenant required by subsection (d) of this Code section or is subject to the renewal of a previous covenant required by subsection (d) of this Code section on or after January 1, 2012."; substituted the present provisions of paragraph (b)(2) for the former provisions, which read: "The owner of a tract, lot, or parcel of land totaling less than ten acres shall be required by the tax assessor to submit additional relevant records regarding proof of bona fide conservation use;"; in subsection (i), designated the existing provisions as paragraph (i)(1) and added paragraph (i)(2); and added subsection (z).

The 2013 amendments. — The first 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted "ten acres" for "10 acres" near the beginning of paragraph (b)(2), substituted "the State Forestry Commission" for "the Georgia Forestry Commission" near the beginning of subsection (s), and revised capitalization at the end of subsection (z). The second 2013 amendment, effective July 1, 2013, deleted "and" at the end of division (a)(1)(D)(v); substituted "and" for "or" at the end of division (a)(1)(E)(iv); and added subparagraph (a)(1)(F). The third 2013 amendment, effective July 1, 2013, in subsection (p), deleted "or" at the end of paragraph (p)(6), substituted a semicolon for a period at the end of subparagraph (p)(7)(B), and added paragraphs (p)(8) and (p)(9).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2012, "and paragraph (3)" was deleted following "paragraph (1) or (2)" in the introductory language of subsection (a); "May 1, 2012" was substituted for "the effective date of this paragraph" at the end of subparagraph (a)(1)(B); in paragraph (b)(2), "May 1, 2012," was substituted for "the effective date of this paragraph" in the first sentence, a period was substituted for a semicolon at the end of the next-to-last sentence, and a semicolon was added at the end. The language appearing in the Act as "(1)(A) The governing authority of a county shall not publish or promulgate any information which is inconsistent with the provisions of this Chapter." was redesignated as subsection (z).

Law reviews. — For article, "The Chevron Two-Step in Georgia's Administrative Law," see 46 Ga. L. Rev. 871 (2012). For annual survey on real property, see 66 Mercer L. Rev. 151 (2014).

JUDICIAL DECISIONS

Requirement of valid covenant and bona fide qualifying use. — O.C.G.A. § 48-5-7.4(g) provides that no property shall maintain the property's eligibility for current use assessment under that Code section unless a valid covenant remains in effect and unless the property is continuously devoted to an applicable bona fide qualifying use during the entire period of the covenant. Terrell County Bd. of Tax Assessors v. Goolsby, 324 Ga. App. 535, 751 S.E.2d 158 (2013).

Property not qualified for current use assessment. — Georgia Court of Appeals concludes that if the taxpayer is operating some other type of business, a business separate and apart from the commercial production from or on the

land of agricultural products, and the business is not incidental, occasional, intermediate, or temporary but is detrimental to or in conflict with the property's primary purpose, then the land does not qualify for current use assessment under O.C.G.A. § 48-5-7.4. Terrell County Bd. of Tax Assessors v. Goolsby, 324 Ga. App. 535, 751 S.E.2d 158 (2013).

Error in failing to make necessary findings as to business operated on property. — Trial court erred by holding that operating a commercial grain business on property designated conservation use property under O.C.G.A. § 48-5-7.4 did not constitute a breach of the conservation use covenant because the court failed to make any findings as to whether the grain business was incidental and not detrimental to the qualifying use of the property. Terrell County Bd. of Tax Assessors v. Goolsby, 324 Ga. App. 535, 751 S.E.2d 158 (2013).

Mandamus relief properly denied since certification of appeals obtained. — Trial court did not err by denying a group of property owners their request for mandamus relief in the nature of finding that the county board of tax assessors certified their property tax appeals because it was undisputed that the tax appeals were physically delivered to the trial court and that it had ruled that such appeals were certified to it, thus, the property owners received the relief sought regarding certification. Newton Timber Co., L.L.L.P. v. Monroe County Bd. of Tax Assessors, 755 S.E.2d 770 (2014).

Notice and opportunity to cure not properly given. — Board of Tax Assessors failed to meet its threshold obligation to provide the property owner with notice of an opportunity to correct the alleged breach of a conservation covenant; therefore, the property owner was entitled to summary judgment in an action for breach of the covenant and assessment of a penalty against the property owner. Morgan County Bd. of Tax Assessors v. Ward, 318 Ga. App. 186, 733 S.E.2d 470 (2012).

48-5-7.6. "Brownfield property" defined; related definitions; qualifying for preferential assessment; disqualification of property receiving preferential assessment; responsibilities of owners; transfers of property; costs; appeals; creation of lien against property; extension of preferential assessment.

(a)(1) For the purposes of this Code section, "brownfield property" means tangible real property where:

(A) There has been a release of hazardous waste, hazardous constituents, and hazardous substances into the environment;

(B) The director of the Environmental Protection Division of the Department of Natural Resources, under Article 9 of Chapter 8 of Title 12, the "Georgia Hazardous Site Reuse and Redevelopment Act," as amended, has approved and not revoked said approval of the prospective purchaser's corrective action plan or compliance status report for such brownfield property;

(C) The director of the Environmental Protection Division of the Department of Natural Resources, under Article 9 of Chapter 8 of Title 12, the "Georgia Hazardous Site Reuse and Redevelopment Act," as amended, has issued and not revoked a limitation of liability certificate for the prospective purchaser; and

(D) The Environmental Protection Division of the Department of Natural Resources has certified eligible costs of remediation pursuant to subsection (j) of this Code section.

(2) The preferential classification and assessment of brownfield property provided for in this Code section shall apply to all real property qualified by the Environmental Protection Division of the Department of Natural Resources under Article 9 of Chapter 8 of Title 12, the "Georgia Hazardous Site Reuse and Redevelopment Act," as amended, and any subsequent improvements to said property.

(3) "Eligible brownfield costs" means costs incurred after July 1, 2003, and directly related to the receipt of a limitation of liability pursuant to Article 9 of Chapter 8 of Title 12, the "Georgia Hazardous Site Reuse and Redevelopment Act," as amended, that are not ineligible costs.

(4) "Ineligible costs" means expenses of the following types:

(A) Purchase or routine maintenance of equipment of a durable nature that is expected to have a period of service of one year or more after being put into use at the property without material impairment of its physical condition, unless the applicant can show that the purchase was directly related to the receipt of a limitation of liability, or the applicant can demonstrate that the equipment was a total loss and that the loss occurred during the activities required for receipt of applicant's limitation of liability pursuant to Article 9 of Chapter 8 of Title 12, the "Georgia Hazardous Site Reuse and Redevelopment Act," as amended;

(B) Materials or supplies not purchased specifically for obtaining a limitation of liability pursuant to Article 9 of Chapter 8 of Title 12, the "Georgia Hazardous Site Reuse and Redevelopment Act," as amended;

(C) Employee salaries and out-of-pocket expenses normally provided for in the property owner's operating budget (i.e. meals, fuel) and employee fringe benefits;

(D) Medical expenses;

(E) Legal expenses;

(F) Other expenses not directly related to the receipt of a limitation of liability pursuant to Article 9 of Chapter 8 of Title 12, the "Georgia Hazardous Site Reuse and Redevelopment Act," as amended;

(G) Costs arising as a result of claims for damages filed by third parties against the property owner or its agents should there be a

new release at the property during or after the receipt of a limitation of liability;

(H) Costs resulting from releases after the purchase of qualified brownfield property that occur as a result of violation of state or federal laws, rules, or regulations;

(I) Purchases of property;

(J) Construction costs;

(K) Costs associated with maintaining institutional controls after the certification of costs by the Environmental Protection Division of the Department of Natural Resources; and

(L) Costs associated with establishing, maintaining or demonstrating financial assurance after the certification of costs by the Environmental Protection Division of the Department of Natural Resources.

(5) "Local taxing authority" means a county, municipal, school district, or any other local governing authority levying ad valorem taxes on a taxpayer's property. If a taxpayer's property is taxed by more than one such authority, the term "local taxing authority" shall mean every levying authority.

(6) "Taxable base" means a value assigned to the brownfield property pursuant to the provisions of subparagraph (F) of paragraph (3) of Code Section 48-5-2.

(7) "Tax savings" means the difference between the amount of taxes paid on the taxable base and the taxes that would otherwise be due on the current fair market value of the qualified brownfield property. Tax savings run with the qualified brownfield property regardless of title transfer and shall be available until the brownfield property is disqualified pursuant to subsection (e) of this Code section.

(b) In order for property to qualify under this Code section for preferential assessment as provided for in subsection (c.4) of Code Section 48-5-7, the applicant must receive the certifications required for brownfield property as defined in paragraph (1) of subsection (a) of this Code section.

(c) Upon receipt of said certifications, a property owner desiring classification of any such contaminated property as brownfield property in order to receive the preferential assessment shall make application to the county board of tax assessors and include said certifications with such application. The county board of tax assessors shall determine if the provisions of this Code section have been complied with, and upon such determination, the county board of tax assessors shall be required

to grant preferential assessment to such property. The county board of tax assessors shall make the determination within 90 days after receiving the application and shall notify the applicant in the same manner that notices of assessment are given pursuant to Code Section 48-5-306. Failure to timely make such determination or so notify the applicant pursuant to this subsection shall be deemed an approval of the application. Appeals from the denial of an application for preferential assessment by the board of tax assessors shall be made in the same manner that other property tax appeals are made pursuant to Code Section 48-5-311.

(d)(1) Property which has been classified by the county board of tax assessors as brownfield property shall be immediately eligible for the preferential assessment provided for in subsection (c.4) of Code Section 48-5-7; provided, however, that, for the purposes of determining the years of eligibility for preferential assessment, the tax year following the year in which the certification was filed with the county board of tax assessors pursuant to subsection (c) of this Code section shall be considered and counted as the first year of eligibility.

(2) Property which is subject to preferential assessment shall be separately classified from all other property on the tax digest; and such separate classification shall be such as will enable any person examining the tax digest to ascertain readily that the property is subject to preferential assessment.

(3) The local taxing authority shall enter upon the tax digest as the basis or value of a parcel of brownfield property a value equal to the lesser of the acquisition cost of the property or the assessment of the fair market value of the property as recorded in the county tax digest at the time application for participation in the Hazardous Site Reuse and Redevelopment Program was submitted to the Environmental Protection Division of the Department of Natural Resources under Article 9 of Chapter 8 of Title 12, the "Georgia Hazardous Site Reuse and Redevelopment Act," as amended. Property classified as brownfield property shall be recorded upon the tax digest as provided in this Code section for ten consecutive assessment years, or as extended pursuant to subsection (o) of this Code section, unless sooner disqualified pursuant to subsection (e) of this Code section, and the notation "brownfield property" shall be entered on the tax digest adjacent to the valuation of such property to indicate that the property is being preferentially assessed. The local taxing authority shall also enter upon the tax digest an assessment of the fair market value of the property each year, excluding the provisions of subparagraph (F) of paragraph (3) of Code Section 48-5-2.

(e)(1) When property has once been classified and assessed as brownfield property, it shall remain so classified and be granted the

preferential assessment until the property becomes disqualified by any one of the following:

(A) Written notice by the taxpayer to the local taxing authority to remove the preferential classification and assessment;

(B) Sale or transfer of ownership to a person not subject to property taxation or making the property exempt from property taxation except a sale or transfer to any authority created by or pursuant to the Constitution of Georgia, statute or local legislation, including a development authority created pursuant to Code Section 36-62-4, constitutional amendment or local legislation, a downtown development authority created pursuant to Code Section 36-42-4, an urban redevelopment agency created pursuant to Code Section 36-61-18, a joint development authority created pursuant to Code Section 36-62-5.1, or a housing authority created pursuant to Code Section 8-3-4;

(C) Revocation of a limitation of liability by the Department of Natural Resources. The Department of Natural Resources has the authority to revoke a limitation of liability pursuant to Article 9 of Chapter 8 of Title 12, the "Georgia Hazardous Site Reuse and Redevelopment Act," as amended. The sale or transfer to a new owner shall not operate to disqualify the property from preferential classification and assessment so long as the property continues to qualify as brownfield property, except as specified in subparagraph (B) of this paragraph;

(D) The later of the expiration of ten years during which the property was classified and assessed as brownfield property or the expiration of this preferential assessment period as extended pursuant to subsection (o) of this Code section; or

(E) The tax savings accrued on the property equal the eligible brownfield costs certified by the Environmental Protection Division of the Department of Natural Resources and submitted to the local taxing authority.

(2) Except as otherwise provided in this Code section, if a property becomes disqualified pursuant to subparagraph (C) of paragraph (1) of this subsection, the decertification shall be transmitted to the county board of tax assessors by the Environmental Protection Division of the Department of Natural Resources and said assessors shall appropriately notate the property as decertified. Such property shall not be eligible to receive the preferential assessment provided for in this Code section during the taxable year in which such disqualification occurs.

(f) After a qualified brownfield property begins to receive preferential tax treatment the property owner shall:

(1) In a sworn affidavit, report his or her tax savings realized for each year to the local taxing authority. Such report shall include:

(A) The number of years preferential tax treatment pursuant to this Code section has been received;

(B) Total certified eligible brownfield costs;

(C) Tax savings realized to date;

(D) Transfers of eligible brownfield costs, if any; and

(E) Eligible brownfield costs remaining;

(2) In the tax year in which the taxes otherwise due on the fair market value of the property exceed any remaining eligible brownfield costs, the taxpayer shall pay the taxes due on the fair market value of the property less any remaining eligible brownfield costs.

(g) A qualified brownfield property may be transferred or leased and continue to receive preferential tax treatment if:

(1) The transferee or lessee of the property is an entity required to pay ad valorem property tax on the qualified brownfield property or an interest therein;

(2) The transferee or lessee complies with all of the requirements of this Code section;

(3) The transferee or lessee meets the requirements of Code Section 12-8-206;

(4) The transferee or lessee continues any and all activities, if any are required, for the continuation of a limitation of liability pursuant to Article 9 of Chapter 8 of Title 12, the "Georgia Hazardous Site Reuse and Redevelopment Act," as amended;

(5) The transferee or lessee and the transferor notify the local taxing authority with respect to the transfer of the qualified brownfield property by filing a separate copy of the transfer with the local taxing authority no later than 90 days following the date of the transfer;

(6) Failure to timely notify one local taxing authority shall not affect any timely notification to any other local taxing authority; and

(7) The transfer of property shall not restart, reset or otherwise lengthen the period of preferential tax treatment pursuant to this Code section.

(h)(1) A qualified brownfield property may be subdivided into smaller parcels and continue to receive preferential tax treatment if:

(A) All of the requirements of subsection (g) of this Code section are met; and

(B) The transferee and transferor agree and jointly submit to the local taxing authority a sworn affidavit stating the eligible brownfield costs being transferred to the subdivided property, to wit:

(i) A transferor's report to the local taxing authority shall include:

(I) The total certified eligible brownfield costs for the qualified brownfield property;

(II) The tax savings realized to date;

(III) The eligible brownfield costs being transferred;

(IV) The number of years of preferential tax treatment pursuant to this Code section has been received;

(V) The eligible brownfield costs remaining; and

(VI) A request to establish the taxable base of the transferred property and reestablish the taxable base for the retained property pursuant to paragraph (2) of this subsection;

(ii) Failure to file a sworn affidavit with one local taxing authority shall not affect any sworn affidavit submitted to any other local taxing authority;

(iii) A transferee's first report to the local taxing authority shall include:

(I) A statement of the amount of the transferred eligible brownfield costs;

(II) The number of years of preferential tax treatment the property received prior to transfer (carry over from transferor); and

(II) A request to establish a taxable base for the property pursuant to paragraph (2) of this subsection; and

(iv) Subsequent reports made by a transferee shall include the same information provided by property owners in paragraph (1) of subsection (f) of this Code section.

(2) The taxable base for the subdivided property shall be established by the local taxing authority based on the ratio of acres purchased to total acres at the time of the establishment of the taxable base for the entire qualified brownfield property. Such ratio shall be applied to the taxable base as recorded in the county tax

digest at the time the application was received by the Environmental Protection Division for participation in the Georgia Hazardous Site Reuse and Redevelopment Program. The taxable base on the retained qualified brownfield property shall be decreased by the amount of taxable base assigned to the subdivided portion of the property.

(3) The subdivision of property shall not restart, reset, or otherwise lengthen the period of preferential tax treatment pursuant to this Code section.

(i) In the year in which preferential tax treatment ends, the taxpayer shall be liable for any and all ad valorem taxes due on the property for which a certified eligible brownfield cost is not claimed as an offset.

(j) The Environmental Protection Division of the Department of Natural Resources shall review the eligible costs submitted by the applicant/taxpayer and shall approve or deny those costs prior to those costs being submitted to the local tax authority. Eligible costs to be certified as accurate by the Environmental Protection Division shall be submitted by the applicant to the division at such time and in such form as is prescribed by the division. Eligible costs may be submitted for certification only once for each assessment or remediation undertaken pursuant to Article 9 of Chapter 8 of Title 12, the "Georgia Hazardous Site Reuse and Redevelopment Act," as amended. The certification of costs shall be a decision of the director and may be appealed in accordance with subsection (c) of Code Section 12-2-2.

(k) The taxing authority shall provide an appropriate form or forms or space on an existing form or forms to implement this Code section.

(l) Taxpayers shall have the same rights to appeal from the determination of the taxable base and assessments and reassessments of qualified brownfield property as set out in Code Section 48-5-311.

(m) A penalty shall be imposed under this Code section if during the special classification period the taxpayer fails to abide by the corrective action plan. The penalty shall be applicable to the entire tract which is the subject of the special classification and shall be twice the difference between the total amount of tax paid pursuant to preferential assessment under this Code section and the total amount of taxes which would otherwise have been due under this chapter for each completed or partially completed year of the special classification period. Any such penalty shall bear interest at the rate specified in Code Section 48-2-40 from the date the special classification is breached.

(n) Penalties and interest imposed under this Code section shall constitute a lien against the property and shall be collected in the same manner as unpaid ad valorem taxes are collected. Such penalties and interest shall be distributed pro rata to each taxing jurisdiction wherein

current use assessment under this Code section has been granted based upon the total amount by which such preferential assessment has reduced taxes for each such taxing jurisdiction on the property in question as provided in this Code section.

(o)(1) Notwithstanding anything to the contrary in subsections (a) through (n) of this Code section, a qualified brownfield property may be eligible for preferential assessment in accordance with the provisions of subsection (c.4) of Code Section 48-5-7 for a period not to exceed 15 years under the following circumstances:

(A) Construction of improvements on the property commenced but thereafter ceased for a period in excess of 180 days;

(B) After a delay in excess of 180 days, construction of improvements on the property resumed; and

(C) The owner of the qualified brownfield property submits a sworn certification to the county board of tax assessors stating the date on which construction first commenced, the date on which construction ceased, and the date on which construction resumed.

(2) Upon receipt of the certification required by subparagraph (C) of paragraph (1) of this subsection, the county board of tax assessors shall extend the period of preferential assessment for one year for each 365 days of construction inactivity for up to a maximum of five consecutive years. Under no circumstances shall the period of preferential assessment exceed 15 consecutive years. (Code 1981, § 48-5-7.6, enacted by Ga. L. 2003, p. 170, § 3; Ga. L. 2004, p. 631, § 48; Ga. L. 2012, p. 843, § 4/HB 1102; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2014, p. 866, § 48/SB 340.)

The 2012 amendment, effective May 1, 2012, inserted "or as extended pursuant to subsection (o) of this Code section," in the next-to-last sentence of paragraph (d)(3); in subparagraph (e)(1)(D), inserted "later of the" near the beginning and inserted "or the expiration of this preferential assessment period as extended pursuant to subsection (o) of this Code section" near the end; and added subsection (o).

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted "Georgia Hazardous Site Reuse and Redevelopment Act" for "Hazardous Sites Reuse and Redevelopment Act" throughout this Code section; deleted "and" at the end of subparagraphs (a)(1)(A) and (a)(1)(B); substituted "subsection (j) of this Code section" for "subsection (j) below" at the end of subparagraph (a)(1)(D); substituted "subsection (e) of this Code section" for "subsection (e) below" at the end of paragraph (a)(7); revised punctuation in subparagraph (e)(1)(B); deleted "or" at the end of subparagraph (e)(1)(C); substituted "subparagraph (C) of paragraph (1) of this subsection" for "subparagraph (C) of this subsection" in paragraph (e)(2); added "and" at the end of subparagraph (f)(1)(D); rewrote subsection (h); and substituted "under this Code section" for "under this subsection" in the first sentence of subsection (m).

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, revised capitalization in subparagraph (e)(1)(B).

48-5-7.7. Short title; definitions; qualifications for conservation use assessment.

(a) This Code section shall be known and may be cited as the "Georgia Forest Land Protection Act of 2008."

(b) As used in this Code section, the term:

(1) "Contiguous" means real property within a county that abuts, joins, or touches and has the same undivided common ownership. If an applicant's tract is divided by a county boundary, public roadway, public easement, public right of way, natural boundary, land lot line, or railroad track, then the applicant has, at the time of the initial application, a one-time election to declare the tract as contiguous irrespective of a county boundary, public roadway, public easement, public right of way, natural boundary, land lot line, or railroad track.

(2) "Forest land conservation use property" means forest land each tract of which consists of more than 200 acres of tangible real property of an owner subject to the following qualifications:

(A) Such property must be owned by an individual or individuals or by any entity registered to do business in this state;

(B) Such property excludes the entire value of any residence and its underlying land located on the property; as used in this subparagraph, the term "underlying land" means the minimum lot size required for residential construction by local zoning ordinances or two acres, whichever is less. This provision for excluding the underlying land of a residence from eligibility in the conservation use covenant shall only apply to property that is first made subject to such a covenant, or is subject to a renewal of a previous conservation use covenant, on or after January 1, 2014;

(C) Such property has as its primary use the good faith subsistence or commercial production of trees, timber, or other wood and wood fiber products from or on the land. Such primary use includes land conservation and ecological forest management in which commercial production of wood and wood fiber products may be undertaken primarily for conservation and restoration purposes rather than financial gain. Such property may, in addition, have one or more of the following secondary uses:

(i) The promotion, preservation, or management of wildlife habitat;

(ii) Carbon sequestration in accordance with the Georgia Carbon Sequestration Registry;

(iii) Mitigation and conservation banking that results in restoration or conservation of wetlands and other natural resources; or

(iv) The production and maintenance of ecosystem products and services, such as, but not limited to, clean air and water.

Forest land conservation use property may include, but is not limited to, land that has been certified as environmentally sensitive property by the Department of Natural Resources or which is managed in accordance with a recognized sustainable forestry certification program, such as the Sustainable Forestry Initiative, Forest Stewardship Council, American Tree Farm Program, or an equivalent sustainable forestry certification program approved by the State Forestry Commission.

(3) "Qualified owner" means any individual or individuals or any entity registered to do business in this state.

(4) "Qualified property" means forest land conservation use property as defined in this subsection.

(5) "Qualifying purpose" means a use that meets the qualifications of subparagraph (C) of paragraph (2) of this subsection.

(c) The following additional rules shall apply to the qualification of forest land conservation use property for conservation use assessment:

(1) All contiguous forest land conservation use property of an owner within a county for which forest land conservation use assessment is sought under this Code section shall be in a single covenant unless otherwise required under subsection (e) of this Code section;

(2) When one-half or more of the area of a single tract of real property is used for the qualifying purpose, then the entirety of such tract shall be considered as used for such qualifying purpose unless some other type of business is being operated on the portion of the tract that is not being used for a qualifying purpose; provided, however, that such other portion must be minimally managed so that it does not contribute significantly to erosion or other environmental or conservation problems or must be used for one or more secondary purposes specified in subparagraph (b)(2)(C) of this Code section. The following uses of real property shall not constitute using the property for another type of business:

(A) The lease of hunting rights or the use of the property for hunting purposes;

(B) The charging of admission for use of the property for fishing purposes;

(C) The production of pine straw or native grass seed;

(D) The granting of easements solely for ingress and egress; and

(E) Any type of business devoted to secondary uses listed under subparagraph (b)(2)(C) of this Code section; and

(3) No otherwise qualified forest land conservation use property shall be denied conservation use assessment on the grounds that no soil map is available for the county or counties, if applicable, in which such property is located; provided, however, that if no soil map is available for the county or counties, if applicable, in which such property is located, the board of tax assessors shall use the current soil classification applicable to such property.

(d) No property shall qualify for conservation use assessment under this Code section unless and until the qualified owner of such property agrees by covenant with the appropriate taxing authority to maintain the eligible property in forest land conservation use for a period of 15 years beginning on the first day of January of the year in which such property qualifies for such conservation use assessment and ending on the last day of December of the final year of the covenant period. After the qualified owner has applied for and has been allowed conservation use assessment provided for in this Code section, it shall not be necessary to make application thereafter for any year in which the covenant period is in effect and conservation use assessment shall continue to be allowed such qualified owner as specified in this Code section. At least 60 days prior to the expiration date of the covenant, the county board of tax assessors where the property is located shall send by first-class mail written notification of such impending expiration. Upon the expiration of any covenant period, the property shall not qualify for further conservation use assessment under this Code section unless and until the qualified owner of the property has entered into a renewal covenant for an additional period of 15 years; provided, however, that the qualified owner may enter into a renewal contract in the fourteenth year of a covenant period so that the contract is continued without a lapse for an additional 15 years.

(e) Subject to the limitations of paragraph (1) of subsection (c) of this Code section, a qualified owner shall be authorized to enter into more than one covenant under this Code section for forest land conservation use property. Any such qualified property may include a tract or tracts of land which are located in more than one county in which event the owner shall enter into a covenant with each county. In the event a single contiguous tract is required to have separate covenants under this subsection, the total acreage of that single contiguous tract shall be utilized for purposes of determining the 200 acre requirement of this Code section.

(f)(1) A qualified owner shall not be authorized to make application for and receive conservation use assessment under this Code section for any property which at the time of such application is receiving preferential assessment under Code Section 48-5-7.1 or current use assessment under Code Section 48-5-7.4; provided, however, that if

any property is subject to a covenant under either of those Code sections, it may be changed from such covenant and placed under a covenant under this Code section if it is otherwise qualified. Any such change shall terminate the existing covenant and shall not constitute a breach thereof. No property may be changed more than once under this paragraph.

(2) Any property that is subject to a covenant under this Code section and subsequently fails to adhere to the qualifying purpose, as defined in paragraph (5) of subsection (b) of this Code section, may be changed from the covenant under this Code section and placed under a covenant provided for in Code Section 48-5-7.4 if the property otherwise qualifies under the provisions of that Code section. In such a case, the existing covenant under this Code section shall be terminated, and the change shall not constitute a breach thereof. No property may be changed more than once under this paragraph.

(g) Except as otherwise provided in this Code section, no property shall maintain its eligibility for conservation use assessment under this Code section unless a valid covenant or covenants, if applicable, remain in effect and unless the property is continuously devoted to forest land conservation use during the entire period of the covenant or covenants, if applicable.

(h) If any breach of a covenant occurs, the existing covenant shall be terminated and all qualification requirements must be met again before the property shall be eligible for conservation use assessment under this Code section.

(i)(1) If ownership of all or a part of a forest land conservation use property is acquired during a covenant period by another qualified owner, then the original covenant may be continued only by both such acquiring owner and the transferor for the remainder of the term, in which event, no breach of the covenant shall be deemed to have occurred if the total size of a tract from which the transfer was made is reduced below 200 acres or the size of the tract transferred is less than 200 acres. Following the expiration of the original covenant, no new covenant shall be entered with respect to either tract unless such tract exceeds 200 acres. If a qualified owner has entered into an original forest land conservation use covenant and subsequently acquires additional qualified property contiguous to the property in the original covenant, the qualified owner may elect to enter the subsequently acquired qualified property into the original covenant for the remainder of the 15 year period of the original covenant; provided, however, that such subsequently acquired qualified property shall be less than 200 acres.

(2) If, following such transfer, a breach of the covenant occurs by the acquiring owner, the penalty and interest shall apply to the entire

transferred tract and shall be paid by the acquiring owner who breached the covenant. In such case, the covenant shall terminate on such entire transferred tract but shall continue on such entire remaining tract from which the transfer was made and on which the breach did not occur for the remainder of the original covenant.

(3) If, following such transfer, a breach of the covenant occurs by the transferring owner, the penalty and interest shall apply to the entire remaining tract from which the transfer was made and shall be paid by the transferring owner who breached the covenant. In such case, the covenant shall terminate on such entire remaining tract from which the transfer was made but shall continue on such entire transferred tract and on which the breach did not occur for the remainder of the original covenant.

(j)(1) For each taxable year beginning on or after January 1, 2014, all applications for conservation use assessment under this Code section, including any forest land covenant required under this Code section, shall be filed on or before the last day for filing ad valorem tax appeals of the annual notice of assessment except that in the case of property which is the subject of a tax appeal of the annual notice of assessment under Code Section 48-5-311, an application for forest land conservation use assessment may be filed at any time while such appeal is pending. An application for continuation of such forest land conservation use assessment upon a change in ownership of all or a part of the qualified property shall be filed on or before the last date for filing tax returns in the year following the year in which the change in ownership occurred. Applications for forest land conservation use assessment under this Code section shall be filed with the county board of tax assessors in which the property is located who shall approve or deny the application. Such county board of tax assessors shall file a copy of the approved covenant in the office of the clerk of the superior court in the county in which the eligible property is located. The clerk of the superior court shall file and index such covenant in the real property records maintained in the clerk's office. If the covenant is not so recorded in the real property records, a transferee of the property affected shall not be bound by the covenant or subject to any penalty for its breach. The fee of the clerk of the superior court for recording such covenants shall be paid by the qualified owner of the eligible property with the application for forest land conservation use assessment under this Code section and shall be paid to the clerk by the board of tax assessors when the application is filed with the clerk. If the application is denied, the board of tax assessors shall notify the applicant in the same manner that notices of assessment are given pursuant to Code Section 48-5-306 and shall return any filing fees advanced by the owner. Appeals from the denial of an application or covenant by the board of tax assessors shall be

made in the same manner that other property tax appeals are made pursuant to Code Section 48-5-311.

(2) In the event such application is approved, the qualified owner shall continue to receive annual notification of any change in the forest land fair market value of such property, and any appeals with respect to such valuation shall be made in the same manner as other property tax appeals are made pursuant to Code Section 48-5-311.

(k) The commissioner shall by regulation provide uniform application and covenant forms to be used in making application for conservation use assessment under this Code section.

(l) In the case of an alleged breach of the covenant, the qualified owner shall be notified in writing by the board of tax assessors. The qualified owner shall have a period of 30 days from the date of such notice to cease and desist the activity alleged in the notice to be in breach of the covenant or to remediate or correct the condition or conditions alleged in the notice to be in breach of the covenant. Following a physical inspection of property, the board of tax assessors shall notify the qualified owner that such activity or activities have or have not properly ceased or that the condition or conditions have or have not been remediated or corrected. The qualified owner shall be entitled to appeal the decision of the board of tax assessors and file an appeal disputing the findings of the board of tax assessors. Such appeal shall be conducted in the same manner that other property tax appeals are made pursuant to Code Section 48-5-311.

(m)(1) A penalty shall be imposed under this subsection if during the period of the covenant entered into by a qualified owner the covenant is breached.

(2) Except as provided in subsection (i) of this Code section and paragraph (4) of this subsection, the penalty shall be applicable to the entire tract which is the subject of the covenant.

(3) The penalty shall be twice the difference between the total amount of the tax paid pursuant to the conservation use assessment under this Code section and the total amount of taxes which would otherwise have been due under this chapter for each completed or partially completed year of the covenant period. Any such penalty shall bear interest at the rate specified in Code Section 48-2-40 from the date the covenant is breached.

(4) If ownership of a portion of the land subject to the original covenant constituting at least 200 acres is transferred to another owner qualified to enter into an original forest land conservation use covenant in a bona fide arm's length transaction and breach subsequently occurs, then the penalty shall either be assessed against the

entire remaining tract from which the transfer was made or the entire transferred tract, on whichever the breach occurred. The calculation of penalties in paragraph (3) of this subsection shall be used except that the penalty amount resulting from such calculation shall be multiplied by the percentage which represents the acreage of such tract on which the breach occurs to the original covenant acreage. The resulting amount shall be the penalty amount owed by the owner of such tract of land on which the breach occurred.

(n) In any case of a breach of the covenant where a penalty under subsection (m) of this Code section is imposed, an amount equal to the amount of reimbursement to each county, municipality, and board of education in each year of the covenant shall be collected under subsection (o) of this Code section and paid over to the commissioner who shall deposit such amount in the general fund.

(o) Penalties and interest imposed under this Code section shall constitute a lien against that portion of the property to which the penalty has been applied under subsection (m) of this Code section and shall be collected in the same manner as unpaid ad valorem taxes are collected. Except as provided in subsection (n) of this Code section, such penalties and interest shall be distributed pro rata to each taxing jurisdiction wherein conservation use assessment under this Code section has been granted based upon the total amount by which such conservation use assessment has reduced taxes for each such taxing jurisdiction on the property in question as provided in this Code section.

(p) The penalty imposed by subsection (m) of this Code section shall not apply in any case where a covenant is breached solely as a result of:

(1) The acquisition of part or all of the property under the power of eminent domain;

(2) The sale of part or all of the property to a public or private entity which would have had the authority to acquire the property under the power of eminent domain; or

(3) The death of an individual qualified owner who was a party to the covenant.

(q) The following shall not constitute a breach of a covenant:

(1) Mineral exploration of the property subject to the covenant or the leasing of the property subject to the covenant for purposes of mineral exploration if the primary use of the property continues to be the good faith production from or on the land of timber;

(2) Allowing all or part of the property subject to the covenant to lie fallow or idle for purposes of any forestry conservation program, for purposes of any federal agricultural assistance program, or for other agricultural management purposes;

(3) Allowing all or part of the property subject to the covenant to lie fallow or idle due to economic or financial hardship if the qualified owner notifies the board of tax assessors on or before the last day for filing a tax return in the county where the land lying fallow or idle is located and if such qualified owner does not allow the land to lie fallow or idle for more than two years of any five-year period;

(4)(A) Any property which is subject to a covenant for forest land conservation use being transferred to a place of religious worship or burial or an institution of purely public charity if such place or institution is qualified to receive the exemption from ad valorem taxation provided for under subsection (a) of Code Section 48-5-41. No qualified owner shall be entitled to transfer more than 25 acres of such person's property in the aggregate under this paragraph.

(B) Any property transferred under subparagraph (A) of this paragraph shall not be used by the transferee for any purpose other than for a purpose which would entitle such property to the applicable exemption from ad valorem taxation provided for under subsection (a) of Code Section 48-5-41 or subsequently transferred until the expiration of the term of the covenant period. Any such use or transfer shall constitute a breach of the covenant; or

(5) Leasing a portion of the property subject to the covenant, but in no event more than six acres of every unit of 2,000 acres, for the purpose of placing thereon a cellular telephone transmission tower. Any such portion of such property shall cease to be subject to the covenant as of the date of execution of such lease and shall be subject to ad valorem taxation at fair market value.

(r) In the following cases, the penalty specified by subsection (m) of this Code section shall not apply and the penalty imposed shall be the amount by which conservation use assessment has reduced taxes otherwise due for the year in which the covenant is breached, such penalty to bear interest at the rate specified in Code Section 48-2-40 from the date of the breach:

(1) Any case in which a covenant is breached solely as a result of the foreclosure of a deed to secure debt or the property is conveyed to the lienholder without compensation and in lieu of foreclosure, if:

(A) The deed to secure debt was executed as a part of a bona fide commercial loan transaction in which the grantor of the deed to secure debt received consideration equal in value to the principal amount of the debt secured by the deed to secure debt;

(B) The loan was made by a person or financial institution who or which is regularly engaged in the business of making loans; and

(C) The deed to secure debt was intended by the parties as security for the loan and was not intended for the purpose of

carrying out a transfer which would otherwise be subject to the penalty specified by subsection (m) of this Code section;

(2) Any case in which a covenant is breached solely as a result of a medically demonstrable illness or disability which renders the qualified owner of the real property physically unable to continue the property in the qualifying use, provided that the board of tax assessors or boards of assessors, if applicable, shall require satisfactory evidence which clearly demonstrates that the breach is the result of a medically demonstrable illness or disability;

(3) Any case in which a covenant is breached solely as a result of a qualified owner electing to discontinue the property in its qualifying use, provided such qualified owner has renewed without an intervening lapse at least once the covenant for land conservation use, has reached the age of 65 or older, and has kept the property in the qualifying use under the renewal covenant for at least three years. Such election shall be in writing and shall not become effective until filed with the county board of tax assessors or boards of assessors, if applicable; or

(4) Any case in which a covenant is breached solely as a result of a qualified owner electing to discontinue the property in its qualifying use, provided such qualified owner entered into the covenant for forest land conservation use for the first time after reaching the age of 67 and has either owned the property for at least 15 years or inherited the property and has kept the property in the qualifying use under the covenant for at least three years. Such election shall be in writing and shall not become effective until filed with the county board of tax assessors where the property is located.

(s) Property which is subject to forest land conservation use assessment under this Code section shall be separately classified from all other property on the tax digest; and such separate classification shall be such as will enable any person examining the tax digest to ascertain readily that the property is subject to conservation use assessment under this Code section. Covenants shall be public records and shall be indexed and maintained in such manner as will allow members of the public to locate readily the covenant affecting any particular property subject to conservation use assessment under this Code section. Based on information submitted by the county boards of tax assessors, the commissioner shall maintain a central registry of conservation use property, indexed by qualified owners.

(t) The commissioner shall annually submit a report to the Governor, the Department of Agriculture, the Georgia Agricultural Statistical Service, the State Forestry Commission, the Department of Natural Resources, and the University of Georgia Cooperative Extension Ser-

vice and the House Ways and Means, Natural Resources and Environment, and Agriculture and Consumer Affairs committees and the Senate Finance, Natural Resources and the Environment, and Agriculture and Consumer Affairs committees and shall make such report available to other members of the General Assembly, which report shall show the fiscal impact of the assessments provided for in this Code section. The report shall include the amount of assessed value eliminated from each county's digest as a result of such assessments; approximate tax dollar losses, by county, to all local governments affected by such assessments; and any recommendations regarding state and local administration of this Code section, with emphasis upon enforcement problems, if any, attendant with this Code section. The report shall also include any other data or facts which the commissioner deems relevant.

(u) A public notice containing a brief, factual summary of the provisions of this Code section shall be posted in a prominent location readily viewable by the public in the office of the board of tax assessors and in the office of the tax commissioner of each county in this state.

(v) At such time as the property ceases to be eligible for forest land conservation use assessment or when any 15 year covenant period expires and the property does not qualify for further forest land conservation use assessment, the qualified owner of the property shall file an application for release of forest land conservation use treatment with the county board of tax assessors where the property is located who shall approve the release upon verification that all taxes and penalties with respect to the property have been satisfied. After the application for release has been approved by such board of tax assessors, the board shall file the release in the office of the clerk of the superior court in the county in which the original covenant was filed. The clerk of the superior court shall file and index such release in the real property records maintained in the clerk's office. No fee shall be paid to the clerk of the superior court for recording such release. The commissioner shall by regulation provide uniform release forms.

(w) The commissioner shall have the power to make and publish reasonable rules and regulations for the implementation and enforcement of this Code section. Without limiting the commissioner's authority with respect to any other such matters, the commissioner may prescribe soil maps and other appropriate sources of information for documenting eligibility as a forest land conservation use property. The commissioner also may provide that advance notice be given to a qualified owner of the intent of a board of tax assessors to deem a change in use as a breach of a covenant. (Code 1981, § 48-5-7.7, enacted by Ga. L. 2008, p. 297, § 2/HB 1211; Ga. L. 2009, p. 27, § 2/SB 55; Ga. L. 2009, p. 216, § 2A/SB 240; Ga. L. 2011, p. 285, § 1/HB 95; Ga. L. 2013, p. 655, § 2/HB 197.)

The 2011 amendment, effective May 11, 2011, in subsection (b), added paragraph (b)(1) and redesignated former paragraphs (b)(1) through (b)(4) as present paragraphs (b)(2) through (b)(5), respectively, substituted "State" for "Georgia" in the ending undesignated paragraph of paragraph (b)(2), and substituted "paragraph (2)" for "paragraph (1)" in paragraph (b)(5); added "unless otherwise required under subsection (e) of this Code section" at the end of paragraph (c)(1); substituted "subparagraph (b)(2)(C)" for "subparagraph (b)(1)(C)" at the end of the first sentence of paragraph (c)(2); inserted "or counties, if applicable," twice in paragraph (c)(3); inserted "where the property is located" in the third sentence of subsection (d); added the last sentence in subsection (e); in subsection (g), substituted "Code section" for "subsection" near the beginning, substituted "or covenants, if applicable, remain" for "remains" in the middle, and added "or covenants, if applicable" at the end; rewrote subsections (i) and (j); in paragraph (m)(2), substituted "Except as provided in subsection (i) of this Code section and paragraph (4) of this subsection, the" for "The" at the beginning of the introductory paragraph, and substituted "two and one-half" for "2.5" in the middle of subparagraph (m)(2)(B); added paragraph (m)(4); substituted "that portion of the property to which the penalty has been applied under subsection (m) of this Code section" for "the property" in the middle of the first sentence of subsection (o); inserted "or boards of assessors, if applicable," in paragraphs (r)(2) and (r)(3); added "where the property is located" at the end of the last sentence of paragraph (r)(4); in the middle of the first sentence of subsection (t), substituted "State Forestry" for "Georgia Forestry" and inserted "the"; and, in subsection (v), inserted "where the property is located" in the first sentence and substituted "such board" for "the board" near the beginning of the second sentence.

The 2013 amendment, effective July 1, 2013, in subsection (b), added a comma following "railroad track" in the second sentence of paragraph (b)(1); substituted the present provisions of subparagraph (b)(2)(B) for the former provisions, which read: "Such property excludes the entire value of any residence located on the property;"; added the second sentence in subparagraph (b)(2)(C); in the ending undesignated paragraph of paragraph (b)(2), deleted quotes around "Forest land conservation use property" at the beginning, substituted "but is not limited to" for "but not be limited to" near the beginning, and added a comma following "certification program" near the middle; rewrote subsection (c); redesignated former subsection (f) as present paragraph (f)(1); in paragraph (f)(1), substituted "paragraph" for "subsection" at the end of the last sentence; added paragraph (f)(2); in paragraph (i)(1), in the first sentence, substituted "part of a forest land conservation use property is acquired during a covenant period by another qualified owner" for "part of the forest land conservation use property constituting at least 200 acres is acquired during a covenant period by another owner qualified to enter into an original forest land conservation use covenant" near the beginning, inserted a comma following "which event" near the middle, and added "or the size of the tract transferred is less than 200 acres" at the end, and, in the second sentence, substituted "respect to either tract" for "respect to the tract from which the transfer was made"; in paragraph (j)(1), in the first sentence, substituted "2014" for "2010", and substituted "appeals of the annual notice of assessment except that in the case of property which is the subject of a tax appeal of the annual notice of assessment under Code Section 48-5-311, an application for forest land conservation use assessment may be filed at any time while such appeal is pending" for "returns in each county in which the property is located for the tax year for which such forest land conservation use assessment is sought, except that in the case of property which is the subject of a reassessment by the board of tax assessors an application for forest land conservation use assessment may be filed in conjunction with or in lieu of an appeal of the reassessment"; inserted a comma following "such property" near the middle of paragraph (j)(2); rewrote paragraph (m)(2); substituted the

present provisions of paragraph (m)(3) for the former provisions, which read: "Any such penalty shall bear interest at the rate specified in Code Section 48-2-40 from the date the covenant is breached."; and substituted "paragraph (3)" for "paragraph (2)" in the second sentence of paragraph (m)(4).

48-5-9. Persons liable for taxes on property.

JUDICIAL DECISIONS

ANALYSIS

General Consideration

Cited in Muscogee County Bd. of Tax Assessors v. Pace Indus., 307 Ga. App. 532, 705 S.E.2d 678 (2011).

Persons Liable for Taxes

Tax deed purchaser responsible for taxes after tax sale. — Tax deed purchaser, not the church, a defendant in fi. fa., was obligated to pay ad valorem taxes that accrued after the tax sale and before redemption, and the tax commissioner could not use the excess funds to satisfy the buyer's tax obligation that occurred after the tax sale. Iglesia Del Dios Vivo Columna Y Apoyo De La Verdad La Luz Del Mundo, Inc. v. Downing, 321 Ga. App. 778, 742 S.E.2d 742 (2013).

48-5-10. Returnable property.

Law reviews. — For annual survey on real property, see 64 Mercer L. Rev. 255 (2012).

JUDICIAL DECISIONS

First day of tax year controlled bankruptcy debtor's liability. — Chapter 13 debtor was liable for property taxes assessed against the property despite the fact that the debtor's lender was granted relief from stay. Under O.C.G.A. §§ 48-2-55 and 48-5-10, the debtor remained personally liable for the taxes because the debtor was the title holder of the property on the first day of each tax year for which an unsecured priority claim was made. Waddy v. Fulton County Tax Comm'r (In re Waddy), No. 09-64634-WLH, 2010 Bankr. LEXIS 4003 (Bankr. N.D. Ga. Sept. 23, 2010).

Cited in Muscogee County Bd. of Tax Assessors v. Pace Indus., 307 Ga. App. 532, 705 S.E.2d 678 (2011).

48-5-16. Return of tangible personal property in county where business conducted; exemptions; boats; aircraft.

JUDICIAL DECISIONS

Issue of taxability barred by collateral estoppel. — County board of tax assessors was collaterally estopped from re-litigating the issue of whether funeral vaults sold through pre-need burial packages but stored by their seller in the county were subject to ad valorem taxes under O.C.G.A. § 48-5-16 by a 2001 consent decree between the seller and the assessors that stated the vaults were not

taxable. Morgan County Bd. of Tax Assessors v. Vantage Prods. Corp., 323 Ga. App. 823, 748 S.E.2d 468 (2013).

48-5-20. Effect of failure to return taxable property; acquisition of real property by transfer; penalty for failure to make timely return.

JUDICIAL DECISIONS

Valuation of property not based on valuation of Form PT-61. — In connection with the purchase of real property at a tax sale, the value of the property shown on the Form PT-61 did not trump the county tax commissioner's valuation because the proper value to be assigned to the property was the same valuation as in prior years, not the amount shown on Form PT-61. In re Powell-Garvey Co., 2006 Bankr. LEXIS 5095 (Bankr. S.D. Ga. June 13, 2006).

48-5-24. Payment of taxes to county in which returns are made; installment payments, interest, and penalty on delinquent tax payments in certain counties; executions.

(a) All resident and nonresident persons who are required or directed by law to return any property for taxation to a tax commissioner or tax receiver shall pay the taxes on the property to the county in which the property is required or directed by law to be returned.

(b) In all counties having a population of not less than 690,000 nor more than 800,000 according to the United States decennial census of 2010 or any future such census, the taxes shall become due in two equal installments. One-half of the taxes shall be due and payable on July 1 of each year and shall become delinquent if not paid by August 15 in each year. The remaining one-half of the taxes shall be due and payable on October 1 of each year and shall become delinquent if not paid by November 15 of each year. A penalty not to exceed 5 percent of the amount of each installment shall be added to each installment that is not paid before the installment becomes delinquent. Intangible taxes in one installment shall become due on October 1 of each year and shall become delinquent if not paid by December 31. A penalty not to exceed 5 percent of the amount of intangible taxes due shall be added to any installment that is not paid before it becomes delinquent. All taxes remaining unpaid as of the close of business on December 31 of each year shall bear interest at the rate specified in Code Section 48-2-40, but in no event shall an interest payment for delinquent taxes be less than $1.00. The tax collectors shall issue executions for delinquent taxes, penalties, and interest against each delinquent taxpayer in their respective counties. Notwithstanding the foregoing, the governing authority of any county subject to this subsection may change the tax due dates provided in this subsection if the county's tax digest is not approved pursuant to Code Section 48-5-271 before July 1 of any year.

(c)(1) All ad valorem taxes, fees, service charges, and assessments owed by any taxpayer to any county in this state having a population of 900,000 or more according to the United States decennial census of 2010 or any future such census or to any municipality lying wholly or partially within such county and having a population of 350,000 or more according to the United States decennial census of 1970 or any future such census, which are not paid when due shall bear interest at the following rates until paid:

(A) The rate specified in Code Section 48-2-40 on the total amount of any such taxes, fees, service charges, or assessments which are not paid when due; and

(B) An additional rate of interest on the amount of such taxes, fees, service charges, and assessments which exceeds $1,000.00 equal to 1 percent per annum for each full calendar month which elapses between the date that the taxes, fees, service charges, and assessments first become due and the date on which they are paid in full. The total rate of interest determined under this paragraph shall not exceed 12 percent per annum or the rate specified in Code Section 48-2-40, whichever is more. The additional rate of interest shall not apply to amounts determined to be owed by a taxpayer pursuant to any arbitration, equalization, or similar proceeding, if brought in good faith by the taxpayer, provided that the taxpayer shall have previously paid to the county or municipality the amount of such liability which was not in dispute;

(2) The rates of interest provided in subparagraphs (A) and (B) of paragraph (1) of this subsection shall be determined on the date delinquent amounts are paid in full and interest at the rate so determined shall accrue from the date on which the amount or installment thereof first becomes due until the date on which the amount or installment thereof is paid in full. Determination of the rates of interest shall be made separately as to amounts owed by a taxpayer to separate taxing jurisdictions, and the determination shall be made separately as to each parcel of property owned by a taxpayer.

(3) The tax collectors, tax commissioners, or governing authority of any such county or municipality shall issue executions against such taxpayer owing taxes, fees, service charges, or assessments together with interest thereon as provided in this subsection when the same become delinquent.

(d) In all counties having a population of not less than 150,000 nor more than 180,000 or not less than 183,000 nor more than 216,000 or not less than 218,000 nor more than 445,000 according to the United States decennial census of 1990 or any future such census, a penalty of

10 percent of the tax due shall accrue on taxes not paid on or before December 20 of each year, and interest shall accrue at the rate specified in Code Section 48-2-40 on the total amount of unpaid taxes and penalty until both the taxes and penalty are paid. The tax collectors shall issue executions for such taxes, penalty, and interest against each delinquent taxpayer in their respective counties. The 10 percent penalty shall be paid over to the county fiscal authority to assist the county in paying the expense of collecting the delinquent taxes.

(e) In all counties having a population of not less than 680,000 nor more than 690,000 according to the United States decennial census of 2010 or any future such census, the taxes shall become due and payable on August 15 in each year and shall become delinquent if not paid by October 15 of each year. A penalty of 5 percent of the tax due shall accrue on taxes not paid on or before October 15 of each year, and interest shall accrue at the rate specified in Code Section 48-2-40 on the total amount of unpaid taxes and penalty until both the taxes and the penalty are paid. The tax collectors shall issue executions for delinquent taxes, penalties, and interest against each delinquent taxpayer in their respective counties. Nothing contained in this subsection shall be construed to impose any liability for the payment of any ad valorem taxes upon any person for property which was not owned on January 1 of the applicable tax year. (Ga. L. 1903, p. 16, § 1; Civil Code 1910, § 1078; Code 1933, § 92-6402; Code 1933, § 91A-1022, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 10; Ga. L. 1980, p. 710, § 1; Ga. L. 1981, p. 388, § 1; Ga. L. 1981, p. 533, § 1; Ga. L. 1981, p. 1857, § 11; Ga. L. 1982, p. 3, § 48; Ga. L. 1982, p. 936, § 1; Ga. L. 1983, p. 3, § 37; Ga. L. 1984, p. 22, § 48; Ga. L. 1991, p. 303, § 3; Ga. L. 1992, p. 1218, § 1; Ga. L. 1992, p. 1690, § 1; Ga. L. 2002, p. 1409, §§ 1, 2; Ga. L. 2002, p. 1473, § 1; Ga. L. 2012, p. 687, § 1/HB 634.)

The 2012 amendment, effective July 1, 2012, substituted "2010" for "2000" in subsections (b), (c), and (e); in subsection (b), substituted "690,000" for "625,000" and substituted "800,000" for "700,000"; substituted "900,000" for "800,000" in paragraph (c)(1); and, in subsection (e), substituted "680,000" for "595,000" and substituted "690,000" for "660,000".

48-5-29. Acquisition of jurisdiction by superior court in ad valorem property tax litigation; payment and distribution of property taxes; excess payments; underpayments.

(a) Before the superior court has jurisdiction to entertain any civil action, appeal, or affidavit of illegality filed under this title by any aggrieved taxpayer concerning liability for ad valorem property taxes, taxability of property for ad valorem property taxes, valuation of property for ad valorem taxes, or uniformity of assessments for ad valorem property taxes, the taxpayer shall pay the amount of ad

valorem property taxes assessed against the property at issue for the last year for which taxes were finally determined to be due on the property, or, if less, the amount of the temporary tax bill issued pursuant to Code Section 48-5-311. For the purposes of this Code section, taxes shall not be deemed finally determined to be due on a property for a tax year until all appeals under Code Section 48-5-311 and proceedings for refunds under Code Section 48-5-380 have become final.

(b) Ad valorem taxes due under this Code section shall be paid to the tax collector or tax commissioner of the county where the property is located. If the property is located within any municipality, the portion of the payment due the municipality shall be paid to the officer designated by the municipality to collect ad valorem taxes.

(c) All taxes paid to the county tax collector or tax commissioner under this Code section shall be distributed to the state, county, county schools, and any other applicable taxing districts in the same proportion as the millage rate for each bears to the total millage rate applicable to the property for the current year. If the total millage rate has not been determined for the current year, the distribution shall be made on the basis of the millage rates established for the immediately preceding year.

(d) Any payment made by the taxpayer in accordance with this Code section which is in excess of his or her finally determined tax liability shall be refunded to the taxpayer. If the amount finally determined to be the tax liability of the taxpayer exceeds the amount paid under this Code section, the taxpayer shall be liable for the amount of the difference between the amount of tax paid and the amount of tax owed. The amount of difference shall be subject to the interest provided under subsection (g) of Code Section 48-5-311. (Ga. L. 1976, p. 1154, §§ 1-4; Code 1933, § 91A-1029, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1981, p. 1857, § 12; Ga. L. 2014, p. 672, § 2/HB 755.)

The 2014 amendment, effective July 1, 2014, in subsection (a), added ", or, if less, the amount of the temporary tax bill issued pursuant to Code Section 48-5-311" at the end of the first sentence and added the second sentence; and, in subsection (d), inserted "or her" in the first sentence and substituted "interest provided under subsection (g) of Code Section 48-5-311" for "same penalty and interest as any other unpaid ad valorem tax" at the end of the last sentence.

JUDICIAL DECISIONS

Failure to comply with O.C.G.A. § 48-5-29(a). — Trial court did not err in dismissing for lack of jurisdiction the taxpayers' action seeking an interlocutory injunction to prohibit a county tax commissioner from collecting upon tax fi. fas. issued against their personal property based on their failure to pay ad valorem property taxes because the taxpayers were required to comply with O.C.G.A. § 48-5-29(a), but the taxpayers did not pay all of their taxes; the taxpayers could

not circumvent the requirement of § 48-5-29(a) by characterizing their complaint as a constitutional "due process" action rather than one arising under the Revenue Code because the complaint was squarely aimed at challenging their ad valorem property tax assessments. Coffman Grading Co. v. Forsyth County, 303 Ga. App. 836, 695 S.E.2d 310 (2010).

Although the trial court correctly held that taxpayers had to pay certain taxes pursuant to O.C.G.A. § 48-5-29(a), the court erred in failing to hold an evidentiary hearing to determine the amount taxpayers owed; because the taxpayers challenged the ad valorem taxes on the property for the years 2004 through 2008, the last year for which taxes were finally determined to be due was 2003, and in order for the trial court to entertain the action, the taxpayers had to pay an amount equal to the 2003 ad valorem taxes on the property for each of the challenged years, less the value of property already seized. Coffman Grading Co. v. Forsyth County, 303 Ga. App. 836, 695 S.E.2d 310 (2010).

48-5-32. (For effective date, see note.) Publication by county of ad valorem tax rate.

(a) As used in this Code section, the term:

(1) "Levying authority" means a county, a municipality, or a consolidated city-county governing authority or other governing authority of a political subdivision of this state that exercises the power to levy ad valorem taxes to carry out the governing authority's purposes.

(2) "Recommending authority" means a county, independent, or area school board of education that exercises the power to cause the levying authority to levy ad valorem taxes to carry out the board's purposes.

(3) "Taxing jurisdiction" means all the tangible property subject to the levy of a specific levying authority or the recommended levy of a specific recommending authority.

(b)(1) (For effective date, see note.) Each levying authority and each recommending authority shall cause a report to be published in a newspaper of general circulation throughout the county and posted on such authority's website, if available:

(A) At least one week prior to the certification of any recommending authority to the levying authority of such recommending authority's recommended school tax for the support and maintenance of education pursuant to Article VIII, Section VI, Paragraph I of the Constitution; and

(B) At least one week prior to the establishment by each levying authority of the millage rates for ad valorem taxes for educational purposes and ad valorem taxes for purposes other than educational purposes for the current calendar year.

(2) Such reports shall be in a prominent location in such newspaper and shall not be included with legal advertisements, and such

reports shall be posted in a prominent location on such authority's website, if available. The size and location of the advertisements shall not be grounds for contesting the validity of the levy.

(c) The reports required under subsection (b) of this Code section shall contain the following:

(1) For levying authorities, the assessed taxable value of all property, by class and in total, which is within the levying authority's taxing jurisdiction and the proposed millage rate for the levying authority's purposes for the current calendar year and such assessed taxable values and the millage rates for each of the immediately preceding five calendar years, as well as the proposed total dollar amount of ad valorem taxes to be levied for the levying authority's purposes for the current calendar year and the total dollar amount of ad valorem taxes levied for the levying authority's purposes for each of the immediately preceding five calendar years. The information required for each year specified in this paragraph shall also indicate the percentage increase and total dollar increase with respect to the immediately preceding calendar year. In the event the rate levied in the unincorporated area is different from the rate levied in the incorporated area, the report shall also indicate all required information with respect to the incorporated area, unincorporated area, and a combination of incorporated and unincorporated areas;

(2) For recommending authorities, the assessed taxable value of all property, by class and in total, which is within the recommending authority's taxing jurisdiction and the proposed millage rate for the recommending authority's purposes for the current calendar year and such assessed taxable values and the millage rates for each of the immediately preceding five calendar years, as well as the proposed total dollar amount of ad valorem taxes to be recommended for the recommending authority's purposes for the current calendar year and the total dollar amount of ad valorem taxes levied for the recommending authority's purposes for each of the immediately preceding five calendar years. The information required for each year specified in this paragraph shall also indicate the percentage increase and total dollar increase with respect to the immediately preceding calendar year; and

(3) The date, time, and place where the levying or recommending authority will be setting its millage rate for such authority's purposes.

(d) The commissioner shall not accept for review the digest of any county which does not submit simultaneously a copy of such published reports for the county governing authority and the county board of education with such digest. In the event a digest is not accepted for

review by the commissioner pursuant to this subsection, it shall be accepted for review upon satisfactory submission by such county of a copy of such published reports. The levies of each of the levying authorities other than the county governing authority shall be invalid and unenforceable until such time as the provisions of this Code section have been met. (Code 1981, § 48-5-32, enacted by Ga. L. 1990, p. 889, § 1; Ga. L. 1991, p. 1903, § 7; Ga. L. 1993, p. 947, § 7; Ga. L. 2015, p. 1219, § 7/HB 202.)

Delayed effective date. — Subsection (b), as set out above, becomes effective January 1, 2016. For version of subsection (b) in effect until January 1, 2016, see the bound volume.

The 2015 amendment, effective January 1, 2016, in subsection (b), added the present paragraph (1) and (2) designations and redesignated former paragraphs (1) and (2) as subparagraphs (A) and (B); in paragraph (b)(1), in the introductory language, added "and posted on such authority's website, if available" and substituted "one week" for "two weeks" in subparagraphs (b)(1)(A) and (b)(1)(B); and added ", and such reports shall be posted in a prominent location on such authority's website, if available" at the end of the first sentence in paragraph (b)(2).

ARTICLE 2

PROPERTY TAX EXEMPTIONS AND DEFERRAL

PART 1

TAX EXEMPTIONS

48-5-40. Definitions.

As used in this part, the term:

(1) "Applicant" means a person who is:

(A)(i) A married individual living with his or her spouse;

(ii) An individual who is unmarried but who permanently maintains a home for the benefit of one or more other individuals who are related to such individual or dependent wholly or partially upon such individual for support;

(iii) An individual who is widowed having one or more children and maintaining a home occupied by himself or herself and the child or children;

(iv) A divorced individual living in a bona fide state of separation and having legal custody of one or more children, when the divorced individual owns and maintains a home for the child or children; or

(v) An individual who is unmarried or is widowed and who permanently maintains a home owned and occupied by himself or herself; and

(B) A resident of this state as defined in paragraph (15) of Code Section 40-5-1, as amended.

(2) "Home for the aged" means a facility which provides residential services, health care services, or both residential services and health care services to the aged.

(3) "Homestead" means the real property owned by and in possession of the applicant on January 1 of the taxable year and upon which the applicant resides including, but not limited to, the land immediately surrounding the residence to which the applicant has a right of possession under a bona fide claim of ownership. The term "homestead" includes the following qualifications:

(A) The actual permanent place of residence of an individual who is the applicant and which constitutes the home of the family;

(B) Where the person who is the applicant holds the bona fide fee title (although subject to mortgage or debt deed), an estate for life, or under any bona fide contract of purchase providing for the conveyance of title to the applicant upon performance of the contract;

(C) Where the building is occupied primarily as a dwelling;

(D) Where the children of deceased or incapacitated parents occupy the homestead of their parents and one of the children stands in the relation of applicant. This subparagraph shall apply whether or not the estate is distributed;

(E) Where a husband or wife occupies a dwelling and the title of the homestead is in the name of the wife;

(F) In the event a dwelling house which is classed as a homestead is destroyed by fire, flood, storm, or other unavoidable accident or is demolished or repaired so that the owner is compelled to reside temporarily in another place, the dwelling house shall continue to be classed as a homestead for a period of one year after the occurrence;

(G) In the event an individual who is the applicant owns two or more dwelling houses, he shall be allowed the exemption granted by law on only one of the houses. Only one homestead shall be allowed to one immediate family group;

(H) Where property is owned and occupied jointly by two or more individuals all of whom occupy the property as a home and if the property is otherwise entitled to a homestead exemption, the homestead may be claimed in the names of the joint owners residing in the home. Where the property on which a homestead exemption is claimed is jointly owned by the occupant and others,

the occupant or occupants shall be entitled to claim the full amount of the homestead exemption;

(I) The permanent place of residence of an individual in the armed forces. Any such residence shall be construed to be actually occupied as the place of abode of such individual when the family of the individual resides in the residence or when the family is forced to live elsewhere because of the individual's service in the armed forces;

(J) Absence of an individual from his residence because of duty in the armed forces shall not be considered as a waiver upon the part of the individual in applying for a homestead exemption. Any member of the immediate family of the individual or a friend of the individual may notify the tax receiver or the tax commissioner of the individual's absence. Upon receipt of this notice, the tax receiver or tax commissioner shall grant the homestead exemption to the individual who is absent in the armed forces;

(K) The homestead exempted must be actually occupied as the permanent residence and place of abode by the applicant awarded the exemption, and the homestead shall be the legal residence and domicile of the applicant for all purposes whatever;

(L) In all counties having a population of not less than 23,500 nor more than 23,675, according to the United States decennial census of 2010 or any future such census, where the person who is the applicant holds real property subject to a written lease; the applicant has held the property subject to such a lease for not less than three years prior to the year for which application is made; and the applicant is the owner of all improvements located on the real property;

(M) The deed reflecting the actual ownership of the property for which the applicant seeks to receive a homestead exemption must be recorded in the deed records of the county prior to the filing of the application for the homestead exemption; and

(N) Absence of an individual from such individual's residence because of health reasons shall not in and of itself be considered as a waiver upon the part of the individual in applying for a homestead exemption if all other qualifications are otherwise met. Any member of the immediate family of the individual or a friend of the individual may notify the tax receiver or the tax commissioner of the individual's absence. Upon receipt of this notice, the tax receiver or tax commissioner shall grant the homestead exemption to the individual who is absent for health reasons.

(4) "Hospital" means an institution in which medical, surgical, or psychiatric care is provided to individuals who are sick, injured,

diseased, mentally ill, or crippled. "Hospital" does not include an institution licensed as a nursing home under the laws of this state.

(5) "Institutions of purely public charity," "nonprofit hospitals," and "hospitals not operated for the purpose of private or corporate profit and income" mean such institutions or hospitals which may have incidental income from paying patients when the income, if any, is devoted exclusively to the charitable purpose of caring for patients who are unable to pay and to maintaining, operating, and improving the facilities of such institutions and hospitals, and when the income is not directly or indirectly for distribution to shareholders in corporations owning such property or to other owners of such property.

(6) "Occupied primarily as a dwelling" means:

(A) The applicant or members of his family occupy the property as a home; or

(B)(i) The applicant or members of his family occupy a portion of the property as a home;

(ii) No more than one exemption may be claimed pursuant to this subparagraph in connection with the occupancy of one building, except in the case of a duplex or double occupancy dwelling when the line of division follows a natural and bona fide plan as to both land and building and the two units thus formed are separately owned and occupied. (Ga. L. 1878-79, p. 33, § 1; Code 1882, § 798; Civil Code 1895, § 762; Civil Code 1910, § 998; Ga. L. 1913, p. 122, § 1; Ga. L. 1919, p. 82, § 1; Code 1933, § 92-201; Ga. L. 1937-38, Ex. Sess., p. 145, §§ 7-9; Ga. L. 1939, p. 98, § 1; Ga. L. 1939, p. 99, §§ 1, 2; Ga. L. 1943, p. 103, §§ 1, 1A; Ga. L. 1943, p. 348, § 1; Ga. L. 1945, p. 435, § 3; Ga. L. 1945, p. 455, § 1; Ga. L. 1946, p. 12, § 1; Ga. L. 1947, p. 1183, §§ 1, 2; Ga. L. 1952, p. 265, § 1; Ga. L. 1952, p. 317, §§ 1, 2; Ga. L. 1955, p. 122, § 1; Ga. L. 1955, p. 262, § 1; Ga. L. 1965, p. 182, § 1; Ga. L. 1973, p. 19, § 2; Ga. L. 1973, p. 934, § 1; Ga. L. 1977, p. 1152, §§ 1, 2; Code 1933, § 91A-1101, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 1707, § 1; Ga. L. 1981, p. 1267, § 1; Ga. L. 1981, p. 1857, § 13; Ga. L. 1992, p. 2058, §§ 1, 2; Ga. L. 1998, p. 550, § 1; Ga. L. 1998, p. 586, § 1; Ga. L. 1998, p. 1150, § 1; Ga. L. 2002, p. 835, § 1; Ga. L. 2006, p. 1104, § 1/HB 81; Ga. L. 2007, p. 47, § 48/SB 103; Ga. L. 2012, p. 687, § 2/HB 634.)

The 2012 amendment, effective July 1, 2012, in subparagraph (3)(L), substituted "23,500" for "19,200", substituted "23,675" for "19,750", and substituted "2010" for "2000".

48-5-41. Property exempt from taxation.

(a) The following property shall be exempt from all ad valorem property taxes in this state:

(1)(A) Except as provided in this paragraph, all public property.

(B) No public real property which is owned by a political subdivision of this state and which is situated outside the territorial limits of the political subdivision shall be exempt from ad valorem taxation unless the property is:

(i) Developed by grading or other improvements to the extent of at least 25 percent of the total land area and facilities are located on the property which are actively used for a public or governmental purpose;

(ii) Three hundred acres or less in area;

(iii) Located inside a county embracing all or part of a municipality owning such property; or

(iv) That portion of any real property which has been designated as a watershed by the United States Soil and Water Conservation Service and used as a watershed by the political subdivision owning the property.

(C) Property which is owned by and used exclusively as the general state headquarters of a nonprofit corporation organized for the primary purpose of encouraging cooperation between parents and teachers to promote the education and welfare of children and youth, notwithstanding the fact that such nonprofit corporation may derive income from fees or dues paid by persons, organizations, or associations to affiliate with such nonprofit corporation, shall be considered to be an extension of the public schools of this state and such property shall be considered to be public property within the meaning of this paragraph.

(D) Property which is held by a Georgia nonprofit corporation whose income is exempt from federal income tax pursuant to Section 115 of the Internal Revenue Code of 1986 and held exclusively for the benefit of a county, municipality, or school district shall be considered to be public property within the meaning of this paragraph.

(E) Property which qualifies as a public-private transportation project pursuant to Code Section 32-2-80 which property is owned or leased by the state, a state agency, or another governmental entity and which is developed, operated, or held by a private partner shall be considered to be public property within the meaning of this paragraph.

(F) All interests in property on a campus of the Board of Regents of the University System of Georgia primarily used for student housing or parking held by a private party that is contractually obligated to operate such property primarily for the use or benefit of a public college or university shall be considered to be public property within the meaning of this paragraph, provided that such interest of the private party resulted from a competitive procurement.

(2) All places of burial;

(2.1)(A) All places of religious worship; and

(B) All property owned by and operated exclusively as a church, an association or convention of churches, a convention mission agency, or as an integrated auxiliary of a church or convention or association of churches, when such entity is qualified as an exempt religious organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and such property is used in a manner consistent with such exemption under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended;

(3) All property owned by religious groups and used only for single-family residences when no income is derived from the property;

(4) All institutions of purely public charity;

(5)(A) All property of nonprofit hospitals used in connection with their operation when the hospitals have no stockholders, have no income or profit which is distributed to or for the benefit of any private person, and are subject to the laws of this state regulating nonprofit or charitable corporations;

(B) Property exempted pursuant to this paragraph shall not include property of a nonprofit hospital held primarily for investment purposes or used for purposes unrelated to:

(i) Providing of patient care;

(ii) Providing and delivery of health care services; or

(iii) Training and education of physicians, nurses, and other health care personnel;

(6) All buildings erected for and used as a college, incorporated academy, or other seminary of learning;

(7) All funds or property held or used as endowment by colleges, nonprofit hospitals, incorporated academies, or other seminaries of learning when the funds or property are not invested in real estate;

(8) When used by or connected with any public library, all the real and personal property of such library and all the real and personal property of any other literary association;

(9) All books, philosophical apparatus, paintings, and statuary of any company or association which are kept in a public hall and which are not held as merchandise or for purposes of sale or gain;

(10) Reserved;

(11) All property used in or which is a part of any facility which has been installed or constructed at any time for the primary purpose of eliminating or reducing air or water pollution if such facilities have been certified by the Department of Natural Resources as necessary and adequate for the purposes intended;

(12)(A) Property of a nonprofit home for the aged used in connection with its operation when the home for the aged has no stockholders and no income or profit which is distributed to or for the benefit of any private person and when the home is qualified as an exempt organization under the United States Internal Revenue Code, Section 501(c)(3), as amended, and Code Section 48-7-25, and is subject to the laws of this state regulating nonprofit and charitable corporations;

(B) Property exempted by this paragraph shall not include property of a home for the aged held primarily for investment purposes or used for purposes unrelated to the providing of residential or health care to the aged;

(C) For purposes of this paragraph, indirect ownership of such home for the aged through a limited liability company that is fully owned by such exempt organization shall be considered direct ownership;

(13)(A) All property of any nonprofit home for the mentally disabled used in connection with its operation when the home for the mentally disabled has no stockholders and no income or profit which is distributed to or for the benefit of any private person and when the home is qualified as an exempt organization under the United States Internal Revenue Code of 1954, Section 501(c)(3), as amended, and Code Section 48-7-25, and is subject to the laws of this state regulating nonprofit and charitable corporations.

(B) Property exempted by this paragraph shall not include property of a home for the mentally disabled held primarily for investment purposes or used for purposes unrelated to the providing of residential or health care to the mentally disabled;

(14)(A) Property which is owned by and used exclusively as the headquarters, post home, or similar facility of a veterans organi-

zation. As used in this paragraph, the term "veterans organization" means any organization or association chartered by the Congress of the United States which is exempt from federal income taxes but only if such organization is a post or organization of past or present members of the armed forces of the United States organized in the State of Georgia with at least 75 percent of the members of which are past or present members of the armed forces of the United States, and where no part of the net earnings of which inures to the benefit of any private shareholder or individual; or

(B) Property which is owned by and used exclusively by any veterans organization which is qualified as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and which has been organized for the purpose of refurbishing and operating historic military aircraft acquired from the federal government and other sources, making such aircraft airworthy, and putting such aircraft on display to the public for educational purposes; and

(15) Property that is owned by an historical fraternal benefit association and which is used exclusively for charitable, fraternal, and benevolent purposes. As used in this paragraph "fraternal benefit association" means any organization qualified as an exempt organization under the United States Internal Revenue Code of 1954, Section 501(c)(10), as amended, where such organization has a representative form of government and a lodge system with a ritualistic form of work for the meeting of its chapters or other subordinate bodies and whose founding organization received its charter from the General Assembly of Georgia prior to January 1, 1880.

(b) The exemptions provided for in this Code section which refer to colleges, nonprofit hospitals, incorporated academies, or other seminaries of learning shall only apply to those colleges, nonprofit hospitals, incorporated academies, or other seminaries of learning which are open to the general public.

(c) The property exempted by this Code section, excluding property exempted by paragraph (1) of subsection (a) of this Code section, shall not be used for the purpose of producing private or corporate profit and income distributable to shareholders in corporations owning such property or to other owners of such property, and any income from such property shall be used exclusively for religious, educational, and charitable purposes or for either one or more of such purposes and for the purpose of maintaining and operating such religious, educational, and charitable institutions.

(d)(1) Except as otherwise provided in paragraph (2) of this subsection, this Code section, excluding paragraph (1) of subsection (a) of

this Code section, shall not apply to real estate or buildings which are rented, leased, or otherwise used for the primary purpose of securing an income thereon and shall not apply to real estate or buildings which are not used for the operation of religious, educational, and charitable institutions. Donations of property to be exempted shall not be predicated upon an agreement, contract, or other instrument that the donor or donors shall receive or retain any part of the net or gross income of the property.

(2) With respect to paragraph (4) of subsection (a) of this Code section, a building which is owned by a charitable institution that is otherwise qualified as a purely public charity and that is exempt from taxation under Section 501(c)(3) of the federal Internal Revenue Code and which building is used by such charitable institution exclusively for the charitable purposes of such charitable institution, and not more than 15 acres of land on which such building is located, may be used for the purpose of securing income so long as such income is used exclusively for the operation of that charitable institution. (Ga. L. 1878-79, p. 32, § 1; Code 1882, § 798; Civil Code 1895, § 762; Civil Code 1910, § 998; Ga. L. 1913, p. 122, § 1; Ga. L. 1919, p. 82, § 1; Code 1933, § 92-201; Ga. L. 1943, p. 348, § 1; Ga. L. 1946, p. 12, § 1; Ga. L. 1947, p. 1183, §§ 1, 2; Ga. L. 1955, p. 262, § 1; Ga. L. 1965, p. 182, § 1; Ga. L. 1967, p. 629, § 1; Ga. L. 1973, p. 19, §§ 1-3; Ga. L. 1973, p. 934, § 1; Ga. L. 1976, p. 639, § 1; Ga. L. 1977, p. 1152, §§ 1, 2; Code 1933, § 91A-1102, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, §§ 29A, 30; Ga. L. 1982, p. 3, § 48; Ga. L. 1984, p. 520, § 1; Ga. L. 1984, p. 1058, § 1; Ga. L. 1984, p. 1253, § 1; Ga. L. 1987, p. 191, § 9; Ga. L. 1994, p. 927, § 1; Ga. L. 1994, p. 965, § 1; Ga. L. 1995, p. 233, § 1; Ga. L. 1995, p. 1302, § 14; Ga. L. 1997, p. 963, § 1; Ga. L. 1998, p. 1015, § 1; Ga. L. 1998, p. 1150, § 2; Ga. L. 2001, p. 1098, § 3; Ga. L. 2006, p. 235, § 1/HB 173; Ga. L. 2006, p. 376, § 1/HB 848; Ga. L. 2007, p. 341, § 1/HB 445; Ga. L. 2010, p. 987, § 1/HB 1186; Ga. L. 2014, p. 679, § 1/HB 788.)

The 2014 amendment, effective January 1, 2015, added subparagraph (a)(1)(F).

Editor's notes. — The state-wide referendum (Ga. L. 2014, p. 679, § 3/HB 788), which added subparagraph (a)(1)(F), was approved by a majority of qualified voters at the November 4, 2014, general election.

JUDICIAL DECISIONS

Analysis

General Consideration

Construction following 2007 amendment. — In order for an institution to be granted a property tax exemption pursuant to O.C.G.A. § 48-5-41(a)(4), the institution must satisfy certain factors (the owner must be an institution devoted entirely to charitable pursuits, the charitable pursuits of the owner must be for the benefit of the public, and the use of the property must be exclusively devoted to those charitable pursuits) and O.C.G.A. § 48-5-41 because the General Assembly must have intended to allow those institutions that otherwise qualify as a purely public charity to use their property to raise income from activities that are not necessarily charitable in nature so long as the primary purpose of the property was charitable and any income is used exclusively for the operation of that charitable institution, O.C.G.A. § 48-5-41(d)(1), (2); when the General Assembly passed the 2007 amendment, the General Assembly did not intend a change to the effect of O.C.G.A. § 48-5-41(d)(2) but only sought to make clear that, in order to be granted an exemption, any charitable institution must be otherwise qualified as a purely public charity, which includes meeting the requirement that the property be used exclusively for the charitable pursuits of the institution, and the 2007 amendment does not effect a change to existing law since a charitable institution, even before the 2007 amendment, had to qualify as a purely public charity under O.C.G.A. § 48-5-41(a)(4) because, according to the statutory terms, O.C.G.A. § 48-5-41(d)(2) would not even apply unless the former provision was first satisfied. Nuci Phillips Mem. Found. v. Athens-Clarke County Bd. of Tax Assessors, 288 Ga. 380, 703 S.E.2d 648 (2010).

Property not exempt during renovation. — Given the statutory language, binding precedents interpreting that language, and governing principles applicable when discerning entitlement to tax exemptions, the court was without authority to effectively expand upon the reaches of O.C.G.A. § 48-5-41(a)(4). The organization's cited "use" of the property during the property's renovation did not bring the property within the ambit of § 48-5-41(a)(4). H.O.P.E. Through Divine Interventions, Inc. v. Fulton County Bd. of Tax Assessors, 318 Ga. App. 592, 734 S.E.2d 288 (2012).

Reviewing court lacked subject matter jurisdiction. — Reviewing court lacked subject matter jurisdiction to consider value and uniformity in an appeal of a decision of the Hall County Board of Equalization (BOE) as a hospital did not present those issues in the underlying administrative tax case, which was limited to O.C.G.A. § 48-5-41(a)(5), and its application; further, as there was no Hall County Board of Tax Assessors decision concerning value and uniformity that could have been appealed to the BOE, there was no appeal to the BOE on those issues that could have been waived by mutual agreement and initiated, instead, in the reviewing court under O.C.G.A. § 48-5-311(g)(1). Hall County Bd. of Tax Assessors v. Northeast Ga. Health Sys., 317 Ga. App. 389, 730 S.E.2d 715 (2012).

City not entitled to exemption.

In a declaration suit, a city was properly determined not to be a local authority as that term is used in O.C.G.A. § 48-13-13(5) and, thus, was subject to the levy of occupation taxes by another municipality for the city's proprietary operations at the city's airport, which was in the other municipality's city limits, because the terms local authority and municipality were not the same under the statute. City of Atlanta v. City of College Park, 292 Ga. 741, 741 S.E.2d 147 (2013).

Lending money to partnership is not charity. — Because an owner gave a limited partnership—in which an entity controlled by the owner had a nominal interest—a loan that was not expected to be repaid, the loan did not serve a charitable purpose and violated the owner's articles of incorporation; therefore, the owner was not entitled to an ad valorem tax exemption under O.C.G.A. § 48-5-41(a)(4). P'ship Hous. Affordable to Soc'y Everywhere, Inc. v. Decatur County Bd. of Tax Assessors, 312 Ga. App. 663, 719 S.E.2d 556 (2011), cert. denied, No. S12C0523, 2012 Ga. LEXIS 667 (Ga. 2012).

Public Property

Property leased to airline for airport facilities was public use. — Five parcels of property at a city-owned airport that were leased to an airline and used for hangars, flight kitchens, and air cargo were reasonably and uniformly used for the public convenience and welfare to facilitate the effective operation of the airport, and were therefore exempt from ad valorem taxation under O.C.G.A. § 48-5-41(a)(1)(B)(i). City of Atlanta v. Clayton County Bd. of Tax Assessors, 306 Ga. App. 381, 702 S.E.2d 704 (2010), cert. denied, No. S11C0342, 2011 Ga. LEXIS 222 (Ga. 2011); overruled on other grounds by Gilmer County Bd. of Tax Assessors v. Spence, 309 Ga. App. 482, 711 S.E.2d 51 (2011).

Places of Religious Worship

Use of property, not ownership, determines exemption status. — Court of Appeals of Georgia finds no statutory requirement that the owner be the user of the property when dealing with a place of religious worship tax exemption; rather, it is the use of the property that governs the analysis of religious worship tax exemptions. DeKalb County Bd. of Tax Assessors v. Presbytery of Greater Atlanta, Inc., 320 Ga. App. 312, 739 S.E.2d 764 (2013).

Trial court properly granted a property owner summary judgment because the non-cemetery portion of the property at issue qualified for a religious tax exemption under O.C.G.A. § 48-5-4 l(a)(2.1)(A) since no profit was realized from the lease of the property to another religious non-profit corporation. DeKalb County Bd. of Tax Assessors v. Presbytery of Greater Atlanta, Inc., 320 Ga. App. 312, 739 S.E.2d 764 (2013).

Rental of church parking lot did not qualify for tax exempt status. — Grant of summary judgment was affirmed because the parking lot lease agreement and its impact upon the church's use of the property supported the conclusion that the property was real estate rented, leased, or otherwise used for the primary purpose of securing an income thereon as contemplated by O.C.G.A. § 48-5-41(d)(1). First Congregational Church v. Fulton County Bd. of Tax Assessors, 320 Ga. App. 868, 740 S.E.2d 798 (2013).

Institutions of Purely Public Charity

Memorial foundation exempt from ad valorem taxation. — Court of appeals erred in reversing an order affirming a decision of a county board of equalization to grant a memorial foundation an exemption from ad valorem taxation for the property on which the foundation's facility was located because the foundation established that the foundation qualified as a purely public charity pursuant to O.C.G.A. § 48-5-41(a)(4) and fulfilled the requirements in O.C.G.A. § 48-5-41(c), (d)(1), and (2). The property the foundation owned was devoted entirely to charitable purposes; the charitable purposes of the foundation were for the benefit of the public, the foundation qualified as a purely public charity, the foundation provided evidence that all income obtained from the property was used in furtherance of the foundation's charitable services or to offset expenses incurred in the maintenance of the organization's property, and no part of the foundation's income was being distributed to any person with an interest therein. Nuci Phillips Mem. Found. v. Athens-Clarke County Bd. of Tax Assessors, 288 Ga. 380, 703 S.E.2d 648 (2010).

48-5-41.1. Exemption of qualified farm products and harvested agricultural products from taxation.

(a) As used in this Code section, the term:

(1) "Family owned farm entity" means a family corporation, a family partnership, a family general partnership, a family limited partnership, a family limited corporation, or a family limited liability company all of the interest of which is owned by one or more natural

or naturalized citizens related to each other within the fourth degree of civil reckoning. It shall include an estate of which the devisees or heirs are one or more natural or naturalized citizens related to each other within the fourth degree of civil reckoning. It shall include a trust of which the beneficiaries are one or more natural or naturalized citizens related to each other within the fourth degree of civil reckoning. Such family owned farm entity must have derived 80 percent or more of its gross income from bona fide agricultural uses within this state within the year immediately preceding the year in which the exemption provided by this Code section is sought.

(2) "Family owned qualified farm products producer" means an individual or family owned farm entity primarily engaged in the direct cultivation of the soil, including soil removed from the land and placed in pots or containers, or operation of land for the production of qualified farm products. A family owned qualified farm products producer shall not include wholesalers, distributors, storage facility owners, manufacturers, processors, or other similar entities that primarily prepare qualified farm products for any intermediate or final market or that primarily operate to move or facilitate the movement of qualified farm products from a producer to any intermediate or final markets.

(3) "Farm products" means only those farm products eligible to qualify for exemption from ad valorem taxation pursuant to the former provisions of paragraph (10) of subsection (a) of Code Section 48-5-41 as it existed prior to January 1, 1999.

(4) "Harvested agricultural products" means only those harvested agricultural products eligible to qualify for exemption from ad valorem taxation pursuant to the former provisions of paragraph (10) of subsection (a) of Code Section 48-5-41 as it existed prior to January 1, 1999.

(5) "Initial production" means:

(A) When applied to a laying hen, a period beginning at the time the laying hen comes into production at age six months rather than a period beginning when the laying hen is hatched; or

(B) When applied to a brood cow, a period of nine months from the time the brood cow is able to conceive at age 12 months rather than a period beginning when the brood cow is born.

(6) "Producer" means any entity that produces farm products.

(7) "Qualified farm products" means livestock; crops; fruit or nut bearing trees, bushes, or plants; annual and perennial plants; Christmas trees; and plants and trees grown in nurseries for transplanta-

tion elsewhere. Qualified farm products shall not include standing timber.

(b) The following property shall be exempt from all ad valorem property taxes in this state:

(1) All farm products grown in this state and remaining in the hands of the producer during the one year beginning immediately after their initial production;

(2) Harvested agricultural products which have a planting-to-harvest cycle of 12 months or less, which are customarily cured or aged for a period in excess of one year after harvesting and before manufacturing, and which are held in this state for manufacturing and processing purposes; and

(3) All qualified farm products grown in this state:

(A) Remaining in the hands of a family owned qualified farm products producer;

(B) Still in their natural and unprocessed condition, unless processed solely for further use in the production of other qualified farm products; and

(C) Not held for direct retail sale by someone other than the original family owned qualified farm products producer.

(c)(1) As used in this subsection, the term "lease purchase agreement" means a financing agreement under which:

(A) A family owned qualified farm products producer has possession and control of farm tractors, combines, or other farm equipment other than motor vehicles equipment and uses such farm equipment directly in the production of agricultural products; and

(B) The payments made pursuant to such financing agreement are credited towards the purchase of such farm equipment.

(2) Farm tractors, combines, and all other farm equipment other than motor vehicles, whether fixed or mobile, which are owned by or held under a lease purchase agreement and directly used in the production of agricultural products by family owned qualified farm products producers shall be exempt from all ad valorem property taxes in this state. (Code 1981, § 48-5-41.1, enacted by Ga. L. 1998, p. 1150, § 3; Ga. L. 1999, p. 81, § 48; Ga. L. 2000, p. 950, § 1; Ga. L. 2001, p. 887, § 1; Ga. L. 2005, p. 140, § 1/HB 203; Ga. L. 2015, p. 947, § 1/HB 374.)

The 2015 amendment, effective July 1, 2015, added paragraph (c)(1) and designated the previously existing provisions of subsection (c) as paragraph (c)(2).

48-5-41.2. Exemption from taxation of personal property in inventory for business.

All tangible personal property constituting the inventory of a business shall be exempt from state ad valorem taxation. (Code 1981, § 48-5-41.2, enacted by Ga. L. 2009, p. 674, § 1/HB 482; Ga. L. 2010, p. 878, § 48/HB 1387.)

Editor's notes. — The state-wide referendum (Ga. L. 2009, p. 674, § 1), which enacted this Code section, was approved by a majority of qualified voters at the November 2, 2010, general election, and took effect January 1, 2011.

The state-wide referendum (Ga. L. 2010, p. 878, § 48(7)), provides that the 2010 amendment becomes effective on January 1, 2011, but only if an Act found at Ga. L. 2009, p. 674, is approved in a state-wide referendum conducted on the date of the November, 2010, state-wide general election. Ga. L. 2009, p. 674, was approved by a majority of the voters voting at the November 2, 2010, general election.

The 2010 amendment, effective January 1, 2011, part of an Act to revise, modernize, and correct the Code, added a period following the Code section designation.

48-5-48. Homestead extension by qualified disabled veteran; filing requirements; periodic substantiation of eligibility; persons eligible without application.

(a) As used in this Code section, the term "disabled veteran" means:

(1) Any veteran who was discharged under honorable conditions and who has been adjudicated by the United States Department of Veterans Affairs as being 100 percent totally disabled or as being less than 100 percent totally disabled but is compensated at the 100 percent level due to individual unemployability and is entitled to receive a statutory award from the United States Department of Veterans Affairs for:

(A) Loss or permanent loss of use of one or both feet;

(B) Loss or permanent loss of use of one or both hands;

(C) Loss of sight in one or both eyes; or

(D) Permanent impairment of vision of both eyes of the following status: central visual acuity of 20/200 or less in the better eye, with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends on angular distance no greater than 20 degrees in the better eye;

(2) An American veteran of any war or armed conflict in which any branch of the armed forces of the United States engaged, whether under United States command or otherwise, and that he or she is disabled due to the loss or loss of use of both lower extremities such

as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair; due to blindness in both eyes, having only light perception, together with the loss or loss of use of one lower extremity; or due to the loss or loss of use of one lower extremity together with residuals of organic disease or injury which so affect the functions of balance or propulsion as to preclude locomotion without resort to a wheelchair;

(3) Any disabled veteran who is not entitled to receive benefits from the Department of Veterans Affairs but who qualifies otherwise, as provided for by Article VII, Section I, Paragraph IV of the Constitution of Georgia of 1976;

(4) An American veteran of any war or armed conflict who is disabled due to loss or loss of use of one lower extremity together with the loss or loss of use of one upper extremity which so affects the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair; or

(5) A veteran becoming eligible for assistance in acquiring housing under Section 2101 of Title 38 of the United States Code as hereafter amended on or after July 1, 1999.

(b) Any disabled veteran as defined in any paragraph of subsection (a) of this Code section who is a citizen and resident of Georgia is granted an exemption of the greater of $32,500.00 or the maximum amount which may be granted to a disabled veteran under Section 2102 of Title 38 of the United States Code, as amended, on his or her homestead which such veteran owns and actually occupies as a residence and homestead, such exemption being from all ad valorem taxation for state, county, municipal, and school purposes. As of January 1, 2004, the maximum amount which may be granted to a disabled veteran under the above-stated federal law is $50,000.00. The value of all property in excess of the exempted amount cited above shall remain subject to taxation. The unremarried surviving spouse or minor children of any such disabled veteran as defined in this Code section shall also be entitled to an exemption of the greater of $32,500.00 or the maximum amount which may be granted to a disabled veteran under Section 2102 of Title 38 of the United States Code, as amended, on the homestead so long as the unremarried surviving spouse or minor children continue actually to occupy the home as a residence and homestead, such exemption being from all ad valorem taxation for state, county, municipal, and school purposes. As of January 1, 2004, the maximum amount which may be granted to the unremarried surviving spouse or minor children of any such disabled veteran under the above-stated federal law is $50,000.00. The value of all property in excess of such exemption granted to such unremarried surviving spouse or minor children shall remain subject to taxation.

(b.1) The unremarried surviving spouse or minor children of any disabled veteran shall also be entitled to an exemption of the greater of $32,500.00 or the maximum amount on a homestead, or any subsequent homestead within the same county, where such spouse or minor children continue to occupy the home as a homestead, such exemption being from ad valorem taxation for state, county, municipal, and school purposes.

(c)(1) Any disabled veteran qualifying pursuant to paragraph (1) or (2) of subsection (a) of this Code section for the homestead exemption provided for in this Code section shall file with the tax commissioner or tax receiver a letter from the Department of Veterans Affairs or the Department of Veterans Service stating the qualifying disability.

(2) Any disabled veteran qualifying pursuant to paragraph (3) of subsection (a) of this Code section for the homestead exemption provided for in this Code section shall file with the tax commissioner or tax receiver a copy of his DD form 214 (discharge papers from his military records) along with a letter from a doctor who is licensed to practice medicine in this state stating that he is disabled due to loss or loss of use of both lower extremities such as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair; due to blindness in both eyes, having only light perception, together with the loss or loss of use of one lower extremity; or due to the loss or loss of use of one lower extremity together with residuals of organic disease or injury which so affect the functions of balance or propulsion as to preclude locomotion without resort to a wheelchair. Prior to approval of an exemption, a county board of tax assessors may require the applicant to provide not more than two additional doctors' letters if the board is in doubt as to the applicant's eligibility for the exemption.

(3) Any disabled veteran qualifying pursuant to paragraph (4) of subsection (a) of this Code section for the homestead exemption provided for in this Code section shall file with the tax commissioner or tax receiver a letter from a doctor who is licensed to practice medicine in this state stating the qualifying disability. Prior to approval of an exemption, a county board of tax assessors may require the applicant to provide not more than two additional doctors' letters if the board is in doubt as to the applicant's eligibility for the exemption.

(4) Any disabled veteran qualifying pursuant to paragraph (5) of subsection (a) of this Code section for the homestead exemption provided for in this Code section shall file with the tax commissioner or tax receiver a letter from the Department of Veterans Affairs or the Department of Veterans Service stating the eligibility for such housing assistance.

(d) Each disabled veteran shall file for the exemption only once in the county of his residence. Once filed, the exemption shall automatically be renewed from year to year, except as provided in subsection (e) of this Code section. Such exemption shall be extended to the unremarried surviving spouse or minor children at the time of his death so long as they continue to occupy the home as a residence and homestead. In the event a disabled veteran who would otherwise be entitled to the exemption dies or becomes incapacitated to the extent that he or she cannot personally file for such exemption, the spouse, the unremarried surviving spouse, or the minor children at the time of the disabled veteran's death may file for the exemption and such exemption may be granted as if the disabled veteran had made personal application therefor.

(e) Not more often than once every three years, the county board of tax assessors may require the holder of an exemption granted pursuant to this Code section to substantiate his continuing eligibility for the exemption. In no event may the board require more than three doctors' letters to substantiate eligibility.

(f) Any person who as of January 1, 1991, has applied and is eligible for the exemption for disabled veterans, their surviving spouses, and minor children formerly provided for by the sixth unnumbered subparagraph of Article VII, Section I, Paragraph IV of the Constitution of 1976; the exemption for disabled veterans provided for in Article VII, Section II, Paragraph V of the Constitution of 1983; or the exemption for disabled veterans formerly provided for by Code Section 48-5-48.3 as enacted by an Act approved April 11, 1986 (Ga. L. 1986, p. 1445), shall be eligible for the exemption granted by subsection (b) of this Code section without applying for such exemption. (Ga. L. 1959, p. 170, § 1; Ga. L. 1964, p. 280, § 1; Ga. L. 1967, p. 813, § 1; Code 1933, § 91A-1116, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1981, p. 1857, § 15; Ga. L. 1983, p. 3, § 64; Ga. L. 1984, p. 22, § 48; Ga. L. 1984, p. 1058, § 3; Ga. L. 1985, p. 149, § 48; Ga. L. 1990, p. 45, § 1; Ga. L. 1990, p. 1858, § 1; Ga. L. 2000, p. 1223, § 1; Ga. L. 2004, p. 69, § 4; Ga. L. 2004, p. 417, § 1; Ga. L. 2009, p. 646, § 1/HB 304; Ga. L. 2015, p. 816, § 6/HB 48.)

The 2015 amendment, effective July 1, 2015, substituted the present provisions of paragraph (a)(1) for the former provisions, which read: "A wartime veteran who was discharged under honorable conditions and who has been adjudicated by the Department of Veterans Affairs of the United States as being totally and permanently disabled and entitled to receive service connected benefits so long as he or she is 100 percent disabled and receiving or entitled to receive benefits for a 100 percent service connected disability;".

48-5-48.1. Tangible personal property inventory exemption; application; failure to file application as waiver of exemption; denials; notice of renewals.

(a) Any person, firm, or corporation seeking a level 1 freeport exemption from ad valorem taxation of certain tangible personal property inventory when such exemption has been authorized by the governing authority of any county or municipality after approval of the electors of such county or municipality pursuant to the authority of the Constitution of Georgia or Code Section 48-5-48.2 shall file a written application and schedule of property with the county board of tax assessors on forms furnished by such board. Such application shall be filed in the year in which exemption from taxation is sought no later than the date on which the tax receiver or tax commissioner of the county in which the property is located closes the books for the return of taxes.

(b) The application for the level 1 freeport exemption shall provide for:

(1) A schedule of the inventory of goods in the process of manufacture or production which shall include all partly finished goods and raw materials held for direct use or consumption in the ordinary course of the taxpayer's manufacturing or production business in the State of Georgia;

(2) A schedule of the inventory of finished goods manufactured or produced within the State of Georgia in the ordinary course of the taxpayer's manufacturing or production business when held by the original manufacturer or producer of such finished goods; and

(3) A schedule of the inventory of finished goods which on January 1 are stored in a warehouse, dock, or wharf, whether public or private, and which are destined for shipment outside the State of Georgia and the inventory of finished goods which are shipped into the State of Georgia from outside this state and which are stored for transshipment to a final destination outside this state. The information required by Code Section 48-5-48.2 to be contained in the official books and records of the warehouse, dock, or wharf where such property is being stored, which official books and records are required to be open to the inspection of taxing authorities of this state and political subdivisions thereof, shall not be required to be included as a part of or to accompany the application for such exemption.

(c)(1) For purposes of this subsection, the term "file properly" shall mean and include the timely filing of the application and complete schedule of the inventory for which exemption is sought on or before the due date specified in subsection (a) of this Code section.

(2) The failure to file properly the application and schedule shall constitute a waiver of the exemption on the part of the person, firm, or corporation failing to make the application for such exemption for that year as follows:

(A) The failure to report any inventory for which such exemption is sought in the schedule provided for in the application shall constitute a waiver of the exemption on the part of the person, firm, or corporation failing to so report for that taxable year in an amount equal to the difference between fair market value of the inventory as reported and the fair market value finally determined to be applicable to the inventory for which the exemption is sought; and

(B) The failure to file timely such application and schedule shall constitute a waiver of the exemption until the first day of the month following the month such application and schedule are filed properly with the county tax assessor; provided, however, that unless the application and schedule are filed on or before June 1 of such year, the exemption shall be waived for that entire year.

(d) Upon receiving the application required by this Code section, the county board of tax assessors shall determine the eligibility of all types of tangible personal property listed on the application. If any property has been listed which the board believes is not eligible for the exemption, the board shall issue a letter notifying the applicant that all or a portion of the application has been denied. The denial letter shall list the type and total fair market value of all property listed on the application for which the exemption has been approved and the type and total fair market value of all property listed on the application for which the exemption has been denied. The applicant shall have the right to appeal from the denial of the exemption for any property listed and such appeal shall proceed as provided in Code Section 48-5-311. Except as otherwise provided in subparagraph (c)(2)(A) of this Code section, the county board of assessors shall not send a second letter of notification denying the exemption of all or a portion of such property listed on the application on new grounds that could and should have been discerned at the time the initial denial letter was issued.

(e) If the level 1 freeport exemption has been granted to a taxpayer for a taxable year, the county board of tax assessors shall issue a notice of renewal to the taxpayer for the immediately following taxable year. Such notice of renewal shall be issued not later than January 15 of such immediately following taxable year to facilitate the filing of a timely application and schedule by the taxpayer for such taxable year. (Code 1981, § 48-5-48.1, enacted by Ga. L. 1982, p. 1101, § 1; Ga. L. 1983, p. 3, § 37; Ga. L. 1984, p. 1371, § 1; Ga. L. 1992, p. 2482, § 1; Ga. L. 1997, p. 963, § 3; Ga. L. 1998, p. 128, § 48; Ga. L. 1998, p. 1120, § 1A; Ga. L.

1999, p. 81, § 48; Ga. L. 2004, p. 464, § 1; Ga. L. 2012, p. 249, § 1/HB 48.)

The 2012 amendment, effective April 17, 2012, in subsection (a), substituted "seeking a level 1 freeport exemption" for "seeking an exemption" near the beginning of the first sentence, and substituted "the books" for "his books" in the last sentence; and substituted "level 1 freeport exemption" for "tangible personal property inventory exemption" in the introductory paragraph of subsection (b) and near the beginning of the first sentence of subsection (e).

Editor's notes. — Ga. L. 2012, p. 249, § 5/HB 48, not codified by the General Assembly, provides for severability.

JUDICIAL DECISIONS

Freeport exemption did not apply. — Freeport exemption from ad valorem taxes did not apply to a taxpayer's inventory of barbecue grill bodies because the taxpayer's involvement with the grill bodies ended when the taxpayer sold the grill bodies to a producer of barbecue grills, and the final destination of the grill bodies was the producer's plant; the producer incorporated the grill bodies into finished barbecue grills, and it was the completed barbecue grills that the producer eventually shipped out of state. Muscogee County Bd. of Tax Assessors v. Pace Indus., 307 Ga. App. 532, 705 S.E.2d 678 (2011).

What becomes of inventory not relevant to determination of exemption. — Under O.C.G.A. § 48-5-48.1(a), the entity seeking the freeport exemption is required to file a written application and schedule of the property for which the exemption is sought; thus, the statutory scheme looks to the property, that is, the inventory, held by the taxpayer, and what becomes of the inventory in the hands of a purchaser from the taxpayer is not relevant to the determination of the availability of the freeport exemption. Muscogee County Bd. of Tax Assessors v. Pace Indus., 307 Ga. App. 532, 705 S.E.2d 678 (2011).

48-5-48.2. Level 1 freeport exemption; referendum.

(a) This Code section shall be known and may be cited as the "Level 1 Freeport Exemption."

(b) As used in this Code section, the term:

(1) "Destined for shipment to a final destination outside this state" means, for purposes of a level 1 freeport exemption, that portion or percentage of an inventory of finished goods which the taxpayer can establish, through a historical sales or shipment analysis, either of which utilizes information from the preceding calendar year, or other reasonable, documented method, is reasonably anticipated to be shipped to a final destination outside this state. Such other reasonable, documented method may only be utilized in the case of a new business, in the case of a substantial change in scope of an existing business, or in other unusual situations where a historical sales or shipment analysis does not adequately reflect future anticipated shipments to a final destination outside this state. It is not necessary that the actual final destination be known as of January 1 in order to qualify for the exemption.

(2) "Finished goods" means, for purposes of a level 1 freeport exemption, goods, wares, and merchandise of every character and kind but shall not include unrecovered, unextracted, or unsevered natural resources or raw materials or goods in the process of manufacture or production or the stock in trade of a retailer.

(3) "Foreign merchandise in transit" means, for purposes of a level 1 freeport exemption, any goods which are in international commerce where the title has passed to a foreign purchaser and the goods are temporarily stored in this state while awaiting shipment overseas.

(4) "Raw materials" means, for purposes of a level 1 freeport exemption, any material, whether crude or processed, that can be converted by manufacture, processing, or a combination thereof into a new and useful product but shall not include unrecovered, unextracted, or unsevered natural resources.

(5) "Stock in trade of a retailer" means, for purposes of a level 1 freeport exemption, finished goods held by one in the business of making sales of such goods at retail in this state, within the meaning of Chapter 8 of this title, when such goods are held or stored at a business location from which such retail sales are regularly made. Goods stored in a warehouse, dock, or wharf, including a warehouse or distribution center which is part of or adjoins a place of business from which retail sales are regularly made, shall not be considered stock in trade of a retailer to the extent that the taxpayer can establish, through a historical sales or shipment analysis, either of which utilizes information from the preceding calendar year, or other reasonable, documented method, the portion or percentage of such goods which is reasonably anticipated to be shipped outside this state for resale purposes.

(c) The governing authority of any county or municipality may, subject to the approval of the electors of such political subdivision, exempt from ad valorem taxation, including all such taxes levied for educational purposes and for state purposes, all or any combination of the following types of tangible personal property:

(1) Inventory of goods in the process of manufacture or production which shall include all partly finished goods and raw materials held for direct use or consumption in the ordinary course of the taxpayer's manufacturing or production business in this state. The exemption provided for in this paragraph shall apply only to tangible personal property which is substantially modified, altered, or changed in the ordinary course of the taxpayer's manufacturing, processing, or production operations in this state. For purposes of this paragraph, the following activities shall constitute substantial modification in the ordinary course of manufacturing, processing, or production operations:

(A) The cleaning, drying, pest control treatment, or segregation by grade of grain, peanuts or other oil seeds, or cotton;

(B) The remanufacture of aircraft engines or aircraft engine parts or components, meaning the substantial overhauling or rebuilding of aircraft engines or aircraft engine parts or components; and

(C) The blending of fertilizer bulk materials into a custom mixture, whether performed at a commercial fertilizer blending plant, retail outlet, or any application site;

(2) Inventory of finished goods manufactured or produced within this state in the ordinary course of the taxpayer's manufacturing or production business when held by the original manufacturer or producer of such finished goods. The exemption provided for in this paragraph shall be for a period not exceeding 12 months from the date such property is produced or manufactured; or

(3) Inventory of finished goods which, on January 1, are stored in a warehouse, dock, or wharf, whether public or private, and which are destined for shipment to a final destination outside this state and inventory of finished goods which are shipped into this state from outside this state and stored for transshipment to a final destination outside this state, including foreign merchandise in transit. The exemption provided for in this paragraph shall be for a period not exceeding 12 months from the date such property is stored in this state. Such period shall be determined based on application of a first-in, first-out method of accounting for the inventory. The official books and records of the warehouse, dock, or wharf where such property is being stored shall contain a full, true, and accurate inventory of all such property, including the date of the receipt of the property, the date of the withdrawal of the property, the point of origin of the property, and the point of final destination of the same, if known. The official books and records of any such warehouse, dock, or wharf, whether public or private, pertaining to any such property for which a freeport exemption has been claimed shall be at all times open to the inspection of all taxing authorities of this state and of any political subdivision of this state.

(d) Whenever the governing authority of any county or municipality wishes to exempt such tangible property from ad valorem taxation, as provided in this Code section, the governing authority thereof shall notify the election superintendent of such political subdivision, and it shall be the duty of said election superintendent to issue the call for an election for the purpose of submitting to the electors of the political subdivision the question of whether such exemption shall be granted. The referendum ballot shall specify as separate questions the type or

types of property as defined in this Code section which are being proposed to be exempted from taxation. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540.

(e) The governing authority of any county or municipality wherein an exemption has been approved by the voters as provided in this Code section may, by appropriate resolution, a copy of which shall be immediately transmitted to the state revenue commissioner, exempt from taxation 20 percent, 40 percent, 60 percent, 80 percent or all of the value of such tangible personal property as defined in this Code section; provided, however, that once an exemption has been granted, no reduction in the percent of the value of such property to be exempted may be made until and unless such exemption is revoked or repealed as provided in this Code section. An increase in the percent of the value of the property to be exempted may be accomplished by appropriate resolution of the governing authority of such county or municipality, and a copy thereof shall be immediately transmitted to the state revenue commissioner, provided that such increase shall be in increments of 20 percent, 40 percent, 60 percent, or 80 percent of the value of such tangible personal property as defined in this Code section, within the discretion of such governing authority.

(f)(1) If more than one-half of the votes cast on such question are in favor of such exemption, then such exemption may be granted by the governing authority commencing on the first day of any ensuing calendar year; otherwise, such exemption may not be granted. This paragraph is intended to clearly provide that following approval of such exemption in such referendum, such exemption may be granted on the first day of any calendar year following the year in which such referendum was conducted. This paragraph shall not be construed to imply that the granting of such exemption could not previously be delayed to any such calendar year.

(2) Exemptions may only be revoked by a referendum election called and conducted as provided in this Code section, provided that the call for such referendum shall not be issued within five years from the date such exemptions were first granted and, if the results of said election are in favor of the revocation of such exemptions, then such revocation shall be effective only at the end of a five-year period from the date of such referendum.

(g) Level 1 freeport exemptions effected pursuant to this Code section may be granted either in lieu of or in addition to level 2 freeport exemptions under Code Section 48-5-48.6.

(h) The commissioner shall by regulation adopt uniform procedures and forms for the use of local officials in the administration of this Code

section. (Code 1981, § 48-5-48.2, enacted by Ga. L. 1984, p. 1058, § 4; Ga. L. 1992, p. 2482, § 2; Ga. L. 1996, p. 926, § 1; Ga. L. 1998, p. 295, § 3; Ga. L. 1998, p. 1120, § 2; Ga. L. 2012, p. 249, § 2/HB 48; Ga. L. 2013, p. 83, § 1/HB 304.)

The 2012 amendment, effective April 17, 2012, added subsection (a); redesignated former subsection (a) as present subsection (b); in subsection (b), substituted "means, for purposes of a level 1 freeport exemption," for "includes" near the beginning of the first sentence of paragraph (b)(1), substituted "means, for purposes of a level 1 freeport exemption," for "shall mean" near the beginning of paragraphs (b)(2) and (b)(4), added paragraph (b)(3), redesignated former paragraphs (b)(3) and (b)(4) as present paragraphs (b)(4) and (b)(5), respectively, and inserted ", for purposes of a level 1 freeport exemption" in paragraph (b)(5); redesignated former subsection (b) as present subsection (c); added ", including foreign merchandise in transit" at the end of the first sentence of paragraph (c)(3); redesignated former subsections (c) through (e) as present subsections (d) through (f), respectively; added subsection (g); and redesignated former subsection (f) as present subsection (h).

The 2013 amendment, effective January 1, 2014, rewrote paragraph (c)(1). See editor's note for applicability.

Editor's notes. — Ga. L. 2012, p. 249, § 5/HB 48, not codified by the General Assembly, provides for severability.

Ga. L. 2013, p. 83, § 2/HB 304, not codified by the General Assembly, provided that the amendment to this Code section shall apply to all taxable years beginning on and after January 1, 2014.

JUDICIAL DECISIONS

Inventory sold from a taxpayer to a purchaser. — Under O.C.G.A. § 48-5-48.1(a), the entity seeking the freeport exemption is required to file a written application and schedule of the property for which the exemption is sought; thus, the statutory scheme looks to the property, that is, the inventory, held by the taxpayer, and what becomes of the inventory in the hands of a purchaser from the taxpayer is not relevant to the determination of the availability of the freeport exemption. Muscogee County Bd. of Tax Assessors v. Pace Indus., 307 Ga. App. 532, 705 S.E.2d 678 (2011).

Freeport exemption did not apply. — Freeport exemption from ad valorem taxes did not apply to a taxpayer's inventory of barbecue grill bodies because the taxpayer's involvement with the grill bodies ended when the taxpayer sold the grill bodies to a producer of barbecue grills, and the final destination of the grill bodies was the producer's plant; the producer incorporated the grill bodies into finished barbecue grills, and it was the completed barbecue grills that the producer eventually shipped out of state. Muscogee County Bd. of Tax Assessors v. Pace Indus., 307 Ga. App. 532, 705 S.E.2d 678 (2011).

RESEARCH REFERENCES

ALR. — Validity, construction, and application of sales, use, and utility taxes on retail transactions of internet sellers and internet access providers, 30 ALR6th 341.

48-5-48.5. Level 2 freeport exemption; application; filing; renewal.

(a) Any person, firm, or corporation seeking a level 2 freeport exemption from ad valorem taxation of certain tangible personal property inventory when such exemption has been authorized by the governing authority of any county or municipality after approval of the electors of such county or municipality pursuant to the authority of the Constitution of Georgia and Code Section 48-5-48.6 shall file a written application and schedule of property with the county board of tax assessors on forms furnished by such board. Such application shall be filed in the year in which exemption from taxation is sought no later than the date on which the tax receiver or tax commissioner of the county in which the property is located closes the books for the return of taxes.

(b) The application for the level 2 freeport exemption shall provide for a schedule of the inventory of finished goods held by one in the business of making sales of such goods in this state.

(c)(1) For purposes of this subsection, the term "file properly" shall mean and include the timely filing of the application and complete schedule of the inventory for which exemption is sought on or before the due date specified in subsection (a) of this Code section.

(2) The failure to file properly the application and schedule shall constitute a waiver of the exemption on the part of the person, firm, or corporation failing to make the application for such exemption for that year as follows:

(A) The failure to report any inventory for which such exemption is sought in the schedule provided for in the application shall constitute a waiver of the exemption on the part of the person, firm, or corporation failing to so report for that taxable year in an amount equal to the difference between fair market value of the inventory as reported and the fair market value finally determined to be applicable to the inventory for which the exemption is sought; and

(B) The failure to file timely such application and schedule shall constitute a waiver of the exemption until the first day of the month following the month such application and schedule are filed properly with the county tax assessor; provided, however, that unless the application and schedule are filed on or before June 1 of such year, the exemption shall be waived for that entire year.

(d) Upon receiving the application required by this Code section, the county board of tax assessors shall determine the eligibility of all types of tangible personal property listed on the application. If any property

has been listed which the board believes is not eligible for the exemption, the board shall issue a letter notifying the applicant that all or a portion of the application has been denied. The denial letter shall list the type and total fair market value of all property listed on the application for which the exemption has been approved and the type and total fair market value of all property listed on the application for which the exemption has been denied. The applicant shall have the right to appeal from the denial of the exemption for any property listed, and such appeal shall proceed as provided in Code Section 48-5-311. Except as otherwise provided in subparagraph (c)(2)(A) of this Code section, the county board of assessors shall not send a second letter of notification denying the exemption of all or a portion of such property listed on the application on new grounds that could and should have been discerned at the time the initial denial letter was issued.

(e) If the level 2 freeport exemption has been granted to a taxpayer for a taxable year, the county board of tax assessors shall issue a notice of renewal to the taxpayer for the immediately following taxable year. Such notice of renewal shall be issued not later than January 15 of such immediately following taxable year to facilitate the filing of a timely application and schedule by the taxpayer for such taxable year. (Code 1981, § 48-5-48.5, enacted by Ga. L. 2012, p. 249, § 3/HB 48.)

Effective date. — This Code section became effective April 17, 2012.

Editor's notes. — Ga. L. 2012, p. 249, § 5/HB 48, not codified by the General Assembly, provides for severability.

48-5-48.6. Level 2 freeport exemption; referendum.

(a) This Code section shall be known and may be cited as the "Level 2 Freeport Exemption."

(b) As used in this Code section, the term "finished goods" means, for purposes of a level 2 freeport exemption, goods, wares, and merchandise of every character and kind constituting a business's inventory which would not otherwise qualify for a level 1 freeport exemption.

(c) The governing authority of any county or municipality may, subject to the approval of the electors of such political subdivision, exempt from ad valorem taxation, including all such taxes levied for educational purposes and for state purposes, inventory of finished goods.

(d) Whenever the governing authority of any county or municipality wishes to exempt such tangible property from ad valorem taxation, as provided in this Code section, the governing authority thereof shall notify the election superintendent of such political subdivision, and it shall be the duty of said election superintendent to issue the call for an election for the purpose of submitting to the electors of the political

subdivision the question of whether such exemption shall be granted. The referendum ballot shall specify retail business inventory as the types of property as defined in this Code section which are being proposed to be exempted from taxation. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540.

(e) The governing authority of any county or municipality wherein an exemption has been approved by the voters as provided in this Code section may, by appropriate resolution, a copy of which shall be immediately transmitted to the state revenue commissioner, exempt from taxation 20 percent, 40 percent, 60 percent, 80 percent, or all of the value of such tangible personal property as defined in this Code section; provided, however, that once an exemption has been granted, no reduction in the percent of the value of such property to be exempted may be made until and unless such exemption is revoked or repealed as provided in this Code section. An increase in the percent of the value of the property to be exempted may be accomplished by appropriate resolution of the governing authority of such county or municipality, and a copy thereof shall be immediately transmitted to the state revenue commissioner, provided that such increase shall be in increments of 20 percent, 40 percent, 60 percent, or 80 percent of the value of such tangible personal property as defined in this Code section, within the discretion of such governing authority.

(f)(1) If more than one-half of the votes cast on such question are in favor of such exemption, then such exemption may be granted by the governing authority commencing on the first day of any ensuing calendar year; otherwise, such exemption may not be granted. This paragraph is intended to clearly provide that following approval of such exemption in such referendum, such exemption may be granted on the first day of any calendar year following the year in which such referendum was conducted. This paragraph shall not be construed to imply that the granting of such exemption could not previously be delayed to any such calendar year.

(2) Exemptions may only be revoked by a referendum election called and conducted as provided in this Code section, provided that the call for such referendum shall not be issued within five years from the date such exemptions were first granted and, if the results of said election are in favor of the revocation of such exemptions, then such revocation shall be effective only at the end of a five-year period from the date of such referendum.

(g) Level 2 freeport exemptions effected pursuant to this Code section may be granted either in lieu of or in addition to level 1 freeport exemptions under Code Section 48-5-48.2.

(h) The commissioner shall by regulation adopt uniform procedures and forms for the use of local officials in the administration of this Code

section. (Code 1981, § 48-5-48.6, enacted by Ga. L. 2012, p. 249, § 3/HB 48.)

Effective date. — This Code section became effective April 17, 2012.

Editor's notes. — Ga. L. 2012, p. 249, § 5/HB 48, not codified by the General Assembly, provides for severability.

Part 2

Tax Deferral

48-5-76. Deferred taxes and interest constitute prior lien; effect of award for year's support on liens for deferred taxes.

(a) The taxes and interest deferred pursuant to this part shall constitute a prior lien and shall attach as of the date and in the same manner and shall be collected as are other liens for taxes, as provided for under this title, but the deferred taxes and interest shall only be due, payable, and delinquent as provided in this part.

(b) Liens for taxes deferred under this part, except for any lien covering the then current tax year, shall not be divested by an award for year's support authorized pursuant to former Chapter 5 of Title 53 as such existed on December 31, 1997, if applicable, or Chapter 3 of Title 53. (Code 1933, § 91A-2406, enacted by Ga. L. 1980, p. 1707, § 1; Ga. L. 1981, p. 1857, § 26; Ga. L. 1998, p. 128, § 48; Ga. L. 2011, p. 752, § 48/HB 142.)

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted "former Chapter 5 of Title 53 as such existed on December 31, 1997, if applicable, or Chapter 3 of Title 53." for "Chapter 5 of Title 53 of the 'Pre-1998 Probate Code,' if applicable, or Chapter 3 of Title 53 of the 'Revised Probate Code of 1998.'" in subsection (b).

ARTICLE 3

COUNTY TAX OFFICIALS AND ADMINISTRATION

Part 1

Tax Receivers

48-5-100.1. Assumption of duties by chief clerk upon death, resignation, incapacity, or inability of tax commissioner in certain counties; compensation; election of new tax commissioner.

Repealed by Ga. L. 1994, p. 237, § 2, effective July 1, 1994.

Editor's notes. — Ga. L. 2013, p. 141, § 48/HB 79, deleted the reservation of this Code section, effective April 24, 2013.

Part 2

Tax Collectors

48-5-138. Cashbook to be kept by tax collectors and tax commissioners; recording disbursements; audit.

(a) Each tax collector and tax commissioner shall keep a record in the form of a cashbook in which he shall record all items of cash collected for taxes, the date collected, the amount collected, and the name of the person for whose taxes the cash was collected. All of such items, amounts, entries, and dates shall be entered on the debit side upon the lines and in the columns designated in the record book. The entries required to be made by this subsection shall be entered on the book kept for such purpose within 15 days after payment of taxes is received.

(b) Each tax collector and tax commissioner shall record in the cashbook all items of cash paid out by him to the authorities of the state or counties, designating whether to the state or the counties, to whom paid for either the state or county, the date each amount was paid, and the amount paid. All of such items, amounts, entries, and dates shall be entered on the credit side in the lines and columns designated in the record book.

(c) The tax collector or tax commissioner shall present the record book to the county governing authority at the times prescribed by law for making his report to the governing authority so as to permit checking and auditing of the book, to have the endorsement of the name and authority of the auditing official entered in the book, and to have the date of the entry noted. The checking, auditing, and signature of the governing authority auditing official in the record book shall at no time be construed as, nor is it intended to be, a binding or final settlement with the tax collector or tax commissioner. Each check, audit, and signature shall be evidence only that he has reported to the county governing authority as required by law and that the report checks and is in accord with the record book that the tax collector or tax commissioner is required to keep.

(d) The tax collector or tax commissioner shall make and file an accounting as required by Code Section 48-5-154. The record book shall be preserved by the tax collector or tax commissioner in the tax collector's or tax commissioner's office. The commissioner shall furnish the tax collectors and tax commissioners the book required pursuant to this Code section at the state's expense.

(e) Instead of the cashbook or record book specified in this Code section, a tax collector or tax commissioner is authorized to maintain a computerized list showing the information required under this Code section, which list shall be deemed to be such cashbook or record book for the purposes of this article. (Ga. L. 1910, p. 121, §§ 1-4; Code 1933, §§ 92-4902, 92-4903, 92-4904, 92-4905; Ga. L. 1968, p. 1115, § 1; Code 1933, § 91A-1338, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1990, p. 1324, §§ 3, 4; Ga. L. 2011, p. 99, § 92/HB 24.)

The 2011 amendment, effective January 1, 2013, deleted the former third sentence of subsection (d), which read: "The record book or a transcript of the record book, when properly authenticated, shall be admitted in evidence in courts of this state as evidence of the payment of taxes." See editor's note for applicability.

Editor's notes. — Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that the amendment of this Code section by that Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews. — For article, "Evidence," see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

48-5-145. Effect of neglect of duty by tax collector or tax commissioner.

JUDICIAL DECISIONS

Cited in DeKalb County Sch. Dist. v. Ga. State Bd. of Educ., 294 Ga. 349, 751 S.E.2d 827 (2013).

48-5-148. (For effective date, see note.) Interest on unpaid taxes; rate; record of interest and taxes collected.

(a)(1) Except as otherwise expressly provided for by law, ad valorem taxes due the state or any county remaining unpaid on December 20 in each year shall bear interest at the rate specified in Code Section 48-2-40 from December 20, and each tax collector and tax commissioner shall collect the interest on unpaid taxes and account for such interest in his final settlement.

(2) The minimum interest payment on unpaid taxes shall be $1.00.

(3) (For effective date, see note.) In the discretion of the tax commissioner, a taxpayer shall have the option of receiving notices of taxes due via electronic transmission in lieu of, or in addition to, receiving a paper bill via first-class mail. The tax bill shall be transmitted to the taxpayer via e-mail, with delivery or read receipt requested, in portable document format using all e-mail addresses provided by the taxpayer, and the date shown on such transmission shall serve as a postmark. In any instance where such transmission proves undeliverable, the tax commissioner shall mail a bill to the

address of record as found in the county board of tax assessors' records. Each taxpayer shall be afforded 60 days from date of postmark to make full payment of taxes due before the taxes shall bear interest as provided in this Code section. The time period for payment provided for by this paragraph shall not apply in those counties in which a lesser time has been provided by law.

(b) Each tax collector and tax commissioner shall keep a record showing the amount of interest collected from delinquent or defaulting taxpayers, the date upon which the taxes and interest were collected, and the name of the person from whom the tax and interest were collected.

(c) Any provision of law (except Code Section 48-5-511) to the contrary notwithstanding, in each county having a population of not less than 71,500 nor more than 73,000 according to the United States decennial census of 1990 or any future such census, all ad valorem taxes due the county and the state remaining unpaid on November 20 of each year shall bear interest at the rate specified in Code Section 48-2-40 from November 20. On November 20 of each year, the local tax officials shall issue executions against each delinquent or defaulting taxpayer in their respective counties and shall otherwise comply with subsection (a) of Code Section 48-5-161.

(d) Any provision of law except Code Section 48-5-511 to the contrary notwithstanding, in each county having a population of not less than 71,500 and not more than 75,000 according to the United States decennial census of 1990 or any future such census, all ad valorem taxes due the county and the state remaining unpaid on October 20 of each year shall bear interest at the highest legal rate provided by law from that date. On October 20 of each year, the local tax officials shall issue executions against each delinquent or defaulting taxpayer in their respective counties and shall otherwise comply with subsection (a) of Code Section 48-5-161. (Ga. L. 1917, p. 197, §§ 1, 2; Code 1933, §§ 92-5001, 92-5003; Ga. L. 1970, p. 446, § 1; Ga. L. 1972, p. 3921, § 2; Ga. L. 1975, p. 835, § 1; Code 1933, § 91A-1349, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 538, § 3; Ga. L. 1980, p. 10, § 13; Ga. L. 1981, p. 1857, §§ 17, 18; Ga. L. 1982, p. 575, §§ 3, 10; Ga. L. 1983, p. 3, § 37; Ga. L. 1984, p. 22, § 48; Ga. L. 1992, p. 1189, § 1; Ga. L. 1992, p. 1211, § 1; Ga. L. 2015, p. 1219, § 8/HB 202.)

Delayed effective date. — Paragraph (a)(3), as set out above, becomes effective January 1, 2016. For version of paragraph (a)(3) in effect until January 1, 2016, see the 2015 amendment note.

The 2015 amendment, effective January 1, 2016, substituted the present provisions of paragraph (a)(3) for the former provisions, which read: "After notices of taxes due are mailed out, each taxpayer shall be afforded 60 days from date of postmark to make full payment of taxes due before the taxes shall bear interest as provided in this Code section. This para-

graph shall not apply in those counties in which a lesser time has been provided by law."

48-5-155. Removal or suspension of tax collector or tax commissioner failing to account or defaulting; opportunity for hearing; citation.

JUDICIAL DECISIONS

Cited in DeKalb County Sch. Dist. v. Ga. State Bd. of Educ., 294 Ga. 349, 751 S.E.2d 827 (2013).

Part 3

Compensation

48-5-183. Salaries of tax collectors and tax commissioners.

(a) Nothing contained in this Code section shall apply to any tax commissioner or tax collector who is compensated by the fee system of compensation in lieu of a fixed salary. On and after January 1, 1995, no tax collector or tax commissioner in a county having a population of 45,000 or more shall be entitled to fees authorized by Code Section 48-5-180 or Code Section 40-2-33.

(b)(1) Any other law to the contrary notwithstanding, except for the provisions of paragraph (2) of this subsection, the minimum annual salary of each tax collector and tax commissioner who is compensated by an annual salary shall be fixed according to the population of the county in which he or she serves, as determined by the United States decennial census of 2000 or any future such census; provided, however, that such annual salary shall be recalculated in any year following a census year in which the Department of Community Affairs publishes a census estimate for the county prior to July 1 in such year that is higher than the immediately preceding decennial census. Each such officer shall receive an annual salary, payable in equal monthly installments from the funds of his or her county, of not less than the amount fixed in the following schedule:

Population	Minimum Salary
0 — 5,999	$ 29,832.20
6,000 — 11,889	40,967.92
11,890 — 19,999	46,408.38
20,000 — 28,999	49,721.70

29,000 — 38,999	53,035.03
39,000 — 49,999	56,352.46
50,000 — 74,999	63,164.60
75,000 — 99,999	67,800.09
100,000 — 149,999	72,434.13
150,000 — 199,999	77,344.56
200,000 — 249,999	84,458.82
250,000 — 299,999	91,682.66
300,000 — 399,999	101,207.60
400,000 — 499,999	105,316.72
500,000 or more	109,425.84

(2) Whenever the state employees subject to compensation plans authorized and approved in accordance with Code Section 45-20-4 receive a cost-of-living increase or general performance based increase of a certain percentage or a certain amount, the amounts fixed in the minimum salary schedule in paragraph (1) of this subsection, in subsection (g) of Code Section 48-5-137, and, where applicable, in subsection (c) of Code Section 21-2-213, or the amounts derived by increasing each of said amounts through the application of longevity increases pursuant to subsection (d) of this Code section, where applicable shall be increased by the same percentage or same amount applicable to such state employees. If the cost-of-living increase or general performance based increase received by state employees is in different percentages or different amounts as to certain categories of employees, the amounts fixed in the minimum salary schedule in paragraph (1) of this subsection, in subsection (g) of Code Section 48-5-137, and, where applicable, in subsection (c) of Code Section 21-2-213, or the amounts derived through the application of longevity increases, shall be increased by a percentage or an amount not to exceed the average percentage or average amount of the general increase in salary granted to the state employees. The Office of Planning and Budget shall calculate the average percentage increase or average amount increase when necessary. The periodic changes in the amounts fixed in the minimum salary schedule in paragraph (1) of this subsection, in subsection (g) of Code Section 48-5-137, and, where applicable, in subsection (c) of Code Section 21-2-213, or the amounts derived through the application of longevity increases, as authorized by this paragraph shall become effective on the first day of January following the date that the cost-of-living increases received by state employees become effective; provided, however, that if the

cost-of-living increases or general performance based increases received by state employees become effective on January 1, such periodic changes in the amounts fixed in the minimum salary schedule in paragraph (1) of this subsection, in subsection (g) of Code Section 48-5-137, and, where applicable, in subsection (c) of Code Section 21-2-213, or the amounts derived through the application of longevity increases as authorized by this paragraph, shall become effective on the same date that the cost-of-living increases or general performance based increases received by state employees become effective.

(3) The county governing authority may supplement the minimum annual salary of the tax commissioner in such amount as it may fix from time to time; but no tax commissioner's compensation supplement shall be decreased during any term of office. Any prior expenditure of county funds to supplement the tax commissioner's salary in the manner authorized by this paragraph is ratified and confirmed. Nothing contained in this paragraph shall prohibit the General Assembly by local law from supplementing the annual salary of the tax commissioner.

(c) In any county in which more than 50 percent of the population of the county according to the United States decennial census of 1990 or any future such census resides on property of the United States government which is exempt from taxation by this state, the population of the county for the purpose of subsection (b) of this Code section shall be deemed to be the total population of the county minus the population of such county which resides on property of the United States government.

(d) The amounts provided in paragraph (1) of subsection (b) of this Code section, subsection (g) of Code Section 48-5-137, and, where applicable, Code Section 21-2-213, as increased by paragraph (2) of subsection (b) of this Code section, shall be increased by multiplying said amounts by the percentage which equals 5 percent times the number of completed four-year terms of office served by any tax collector or tax commissioner after December 31, 1976, effective the first day of January following the completion of each such period of service. This Code section shall not be construed to affect any local legislation except where the local legislation provides for a salary lower than the salary provided in this Code section, in which event this Code section shall prevail. This Code section shall not be construed to reduce the salary of any tax collector or tax commissioner in office on July 1, 1991; provided, however, that successors to such tax collectors and tax commissioners in office on July 1, 1991, shall be governed by the provisions of this Code section. The minimum salaries provided for in this Code section shall be considered as salary only. Expenses for

deputies, equipment, supplies, copying equipment, and other necessary and reasonable expenses for the operation of a tax collector's or tax commissioner's office shall come from funds other than the funds specified as salary in this Code section.

(e) Notwithstanding any other provisions of this Code section, any tax collector or tax commissioner who, prior to July 1, 1979, was entitled to the commissions allowed by Code Section 40-2-33 may elect to receive the salary he or she was receiving prior to July 1, 1979, together with such commissions relating to the sale of motor vehicle license plates in lieu of the minimum salary provided in subsection (b) of this Code section.

(f) Notwithstanding any other provisions of this Code section, any tax collector or tax commissioner who, prior to January 1, 1980, was receiving a salary lower than the applicable minimum salary provided by subsection (b) of this Code section pursuant to a local law but who also was receiving certain fees and commissions in addition thereto may elect to be excluded from this Code section.

(g) Except as otherwise provided in subsection (f) of this Code section, any local Acts in effect on or enacted subsequent to January 1, 1980, which deal with the compensation of the various tax collectors or tax commissioners, shall remain in full force and effect, except in those instances where such local Acts provide for a salary which is less than the minimum salary provided in subsection (b) of this Code section, in which event this Code section shall prevail.

(h) This Code section shall not be construed so as to place any tax collector or tax commissioner who is on the fee system of compensation on January 1, 1980, on a salary system of compensation. Any such officer who is compensated under the fee system of compensation on January 1, 1980, shall continue to be compensated pursuant to the fee system of compensation until the General Assembly abolishes by local Act the fee system of compensation for such officer and places him or her on an annual salary equal to or greater than the minimum annual salary provided in this Code section. (Ga. L. 1976, p. 988, § 104; Ga. L. 1977, p. 187, § 1; Code 1933, § 91A-1373, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 1250, § 3; Ga. L. 1980, p. 547, § 2; Ga. L. 1982, p. 2244, §§ 1, 2; Ga. L. 1983, p. 3, § 37; Ga. L. 1984, p. 22, § 48; Ga. L. 1985, p. 456, § 1; Ga. L. 1987, p. 366, § 1; Ga. L. 1988, p. 931, § 4; Ga. L. 1989, p. 801, § 4; Ga. L. 1991, p. 94, § 48; Ga. L. 1992, p. 1478, § 7; Ga. L. 1994, p. 620, § 6; Ga. L. 1998, p. 128, § 48; Ga. L. 1998, p. 1159, § 19; Ga. L. 1999, p. 782, § 1; Ga. L. 2001, p. 902, § 20; Ga. L. 2006, p. 568, § 14/SB 450; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-90/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted "Whenever the state employees subject to compensation plans authorized and approved in accordance with Code Section 45-20-4 receive" for "On and after July 1, 2006, whenever the employees in the classified service of the State Personnel Administration receive" in the first sentence of paragraph (b)(2); inserted "or she" near the middle of subsection (e); and inserted "or her" in the second sentence of subsection (h).

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

Part 4

Delinquent Tax Officials

48-5-205. (For effective date, see note.) Penalties for incomplete or improper digests.

(a) (For effective date, see note.) If a tax receiver or tax commissioner fails to have his or her digest completed and deposited by September 1 in each year, unless excused by provisions of law or by the commissioner, such tax receiver or tax commissioner shall forfeit one-tenth of his or her commissions for each week's delay. If the delay extends beyond 30 days, such tax receiver or tax commissioner shall forfeit one-half of his or her commissions. If the delay extends beyond the time when the Governor and commissioner fix the rate percentage, such tax receiver or tax commissioner shall forfeit all such tax receiver's or tax commissioner's commissions.

(b) If a tax receiver or tax commissioner fails to make out his digest in the manner prescribed by law or fails to comply with the directions given him by the commissioner in making out his digest, he shall forfeit one-half his commissions.

(c) If the digest is made out so badly as not to fulfill the purpose of the tax laws, the tax receiver or tax commissioner shall forfeit all his commissions and shall be removed from office by the governing authority of the county upon the request of the commissioner. (Orig. Code 1863, §§ 825, 826, 827; Code 1868, §§ 904, 905, 906; Code 1873, §§ 902, 903, 904; Code 1882, §§ 902, 903, 904; Civil Code 1895, §§ 918, 919, 920; Civil Code 1910, §§ 1181, 1182, 1183; Code 1933, §§ 92-5401, 92-5402, 92-5403; Code 1933, § 91A-1380, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2015, p. 1219, § 9/HB 202.)

Delayed effective date. — Paragraph (a), as set out above, becomes effective January 1, 2016. For version of paragraph (a) in effect until January 1, 2016, see the 2015 amendment note.

The 2015 amendment, effective January 1, 2016, substituted the present provisions of subsection (a) for the former provisions, which read: "If a tax receiver or tax commissioner fails to have his digest completed and deposited by August 1 in each year, unless excused by provisions of law or by the commissioner, he shall forfeit one-tenth of his commissions for each week's delay. If the delay extends beyond 30 days he shall forfeit one-half of his commissions. If the delay extends beyond the time when the Governor and commissioner fix the rate percentage, he shall forfeit all his commissions." See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 1219, § 27(c)/HB 202, not codified by the General Assembly, provides, in part, that Sections 9, 12, and 15 of this Act shall be applicable to all appeals filed on or after January 1, 2016.

ARTICLE 4

COUNTY TAXATION

48-5-220. Purposes of county taxes.

JUDICIAL DECISIONS

Analysis

Specific Purposes Construed

Specific Purposes Construed

Contract between county and airport authority valid.

Contract between the county and the airport authority, which managed the airport, qualified as an enforceable intergovernmental agreement (IGA) that did not violate the Debt Clause in the Georgia Constitution because the IGA was between appropriate governmental entities; the agreement's term did not exceed 50 years; the agreement related to both the provision of services and the joint use of facilities as the airport authority agreed to manage and maintain the expanded taxiway, and the county, in return, agreed to provide funding and manage the debt required to be incurred to complete the expansion; and the agreement dealt with services and facilities about which the county had the authority to enter contracts. Avery v. State of Ga., 295 Ga. 630, 761 S.E.2d 56 (2014).

ARTICLE 5

UNIFORM PROPERTY TAX ADMINISTRATION AND EQUALIZATION

PART 1

EQUALIZATION OF ASSESSMENTS

48-5-263. Qualifications, duties, and compensation of appraisers.

(a) **Qualifications.**

(1) The commissioner shall establish, and the Department of Administrative Services may review, the qualifications and rate of compensation for each appraiser grade.

(2) Each appraiser shall, before his or her employment, obtain a satisfactory grade, as determined by the commissioner, on an examination prepared by the commissioner and an institution of higher education in this state.

(b) **Duties.** Each member of the county property appraisal staff shall:

(1) Make appraisals of the fair market value of all taxable property in the county other than property returned directly to the commissioner;

(2) Maintain all tax records and maps for the county in a current condition. This duty shall include, but not be limited to, the mapping, platting, cataloging, and indexing of all real and personal property in the county;

(3) Prepare annual assessments on all taxable property appraised in the county and submit the assessments for approval to the county board of tax assessors;

(4) Prepare annual appraisals on all tax-exempt property in the county and submit the appraisals to the county board of tax assessors;

(5) Prepare and mail assessment notices after the county board of tax assessors has determined the final assessments;

(6) Attend hearings of the county board of equalization and provide information to the board regarding the valuation and assessments approved by the county board of tax assessors on those properties concerning which appeals have been made to the county board of equalization;

(7) Provide information to the department as needed by the department and in the form requested by the department;

(8) Attend the standard approved training courses as directed by the commissioner for all minimum county property appraisal staffs;

(9) Compile sales ratio data and furnish the data to the commissioner as directed by the commissioner;

(10) Comply with the rules and regulations for staff duties established by the commissioner; and

(11) Inspect mobile homes located in the county to determine if the proper decal is attached to and displayed on the mobile home by the owner as provided by law; notify the residents of those mobile homes to which a decal is not attached of the provisions of Code Sections 48-5-492 and 48-5-493; and furnish to the tax collector or tax commissioner a periodic list of those mobile homes to which a decal is not attached.

(c) **Compensation.** Staff appraisers shall be paid from county funds. The rates of compensation established by the commissioner shall not preclude any county from paying a higher rate of compensation to any appraiser grade. (Ga. L. 1972, p. 1104, § 5; Code 1933, § 91A-1405, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1981, p. 1857, § 23; Ga. L. 1981, p. 1906, § 2; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-91/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted "Department of Administrative Services" for "State Personnel Administration" in paragraph (a)(1); and inserted "or her" in paragraph (a)(2).

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

48-5-265. (For effective date, see note.) Formation of joint county property appraisal staffs.

(a)(1) The governing authorities of any two or more counties may join together and by intergovernmental agreement create a joint county property appraisal staff following consultation with the county boards of tax assessors of such counties. Under any such intergovernmental agreement, the parcels of real property within the counties subject to the intergovernmental agreement shall be totaled, and the counties shall be deemed one county for purposes of determining the class of the counties, the resulting minimum staff requirements,

and the amount of money to be received from the department. The costs of the joint county property appraisal staff shall be determined in the intergovernmental agreement.

(2) The governing authorities of any two or more counties may execute an intergovernmental agreement to provide for the sharing of one or more designated members of property appraisal staff following consultation with the county boards of tax assessors of such counties. The costs of such shared staff members shall be determined in the intergovernmental agreement.

(b) The governing authorities of any two or more counties may join together and by intergovernmental agreement carry out this part following consultation with the county boards of tax assessors of such counties. All counties subject to an intergovernmental agreement under this subsection shall retain their separate character for the purpose of determining the class and minimum staff requirements for each county.

(c)(1) Any county, at its discretion, may enter into contracts with persons to render advice or assistance to the county board of tax assessors in the assessment and equalization of taxes, the establishment of property valuations, or the defense of such valuations. Such advice and assistance shall be in compliance with the laws of this state and the rules and regulations of the commissioner. Individuals performing services under such contracts shall complete satisfactorily such training courses as directed by the commissioner. The function of any person contracting to render such services shall be advisory or ministerial, and the final decision as to the amount of assessments and the equalization of assessments shall be made by the county board of tax assessors and shall be set forth in the minutes of the county board of tax assessors.

(2) No contract entered into pursuant to paragraph (1) of this subsection shall contain any provision authorizing payment to any person contracted with, or to any person employed by any person contracted with, upon a percentage basis or upon any basis under which compensation is dependent or conditioned in any way upon increasing or decreasing the aggregate assessment of property in the county. Any contract or provision of a contract which is in violation of this paragraph shall be void and unenforceable. (Ga. L. 1972, p. 1104, § 7; Code 1933, § 91A-1407, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2015, p. 1219, § 10/HB 202.)

Delayed effective date. — This Code section, as set out above, becomes effective January 1, 2016. For version of Code section in effect until January 1, 2016, see the 2015 amendment note.

The 2015 amendment, effective January 1, 2016, substituted the present provisions of this Code section for the former provisions, which read: "(a) Contiguous Class I counties may join together and contract to create a joint county property appraisal staff. Under any such contract,

the parcels of real property within the contracting counties shall be totaled and the counties shall be deemed one county for purposes of determining the class of the counties, the resulting minimum staff requirements, and the amount of money to be received from the department. The costs of the joint county property appraisal staff shall be shared, each county's share to be based upon the ratio which the number of parcels of real property in each contracting county bears to the total number of parcels of real property in all the contracting counties. Any number of Class I counties may join together to create a joint county property appraisal staff.

"(b) Each Class I county may contract with a contiguous county which has a minimum county property appraisal staff to carry out this part. Counties contracting in this manner shall retain their separate character for the purpose of determining the class and minimum staff requirements for each contracting county.

"(c)(1) Each Class I county, at its discretion, may enter into contracts with persons to render advice or assistance to the county board of tax assessors and to the county board of equalization in the assessment and equalization of taxes and to perform such other ministerial duties as are necessary and appropriate to carry out this part. The function of any person contracting to render such services shall be advisory or ministerial only and the final decision as to the amount of assessments and the equalization of assessments shall be made by the county board of tax assessors and the county board of equalization.

"(c)(2) No contract entered into pursuant to paragraph (1) of this subsection shall contain any provision authorizing payment to any person contracted with, or to any person employed by any person contracted with, upon a percentage basis or upon any basis under which compensation is dependent or conditioned in any way upon increasing or decreasing the aggregate assessment of property in the county. Any contract or provision of a contract which is in violation of this paragraph is void and unenforceable."

48-5-267. State payments for minimum staff of appraisers; state salary supplements for qualified appraisers.

(a) An amount which is equal to one-half of the total compensation payable to the minimum staff in all of the counties, as determined by the commissioner with the approval of the Department of Administrative Services, shall be paid to the counties by the department in the following manner:

(1) The greater of 15 percent of the amount appropriated and deemed available by the commissioner for the purpose of carrying out the provisions of this part regarding minimum staff compensation or $200,000.00, if deemed available by the commissioner, shall be distributed equally among all of the counties of the state; and

(2) The payment to be made to each county from the remainder of the amount after distribution as provided in paragraph (1) of this subsection, if any, shall be equal to the remaining amount multiplied by a fraction, the denominator of which is the total of all parcels of real property located within the state and the numerator of which is the number of parcels of real property located within the county.

(b) Payments provided for in this Code section shall be made in the manner determined by the commissioner. The commissioner shall not make any payments to any county which:

(1) Is not maintaining its records as required by this part;

(2) Has not employed a minimum staff of appraisers; or

(3) In the case of Class I counties, has not entered into a contract providing for the performance of the requirements of this part.

(c) Payments provided for in this Code section shall be paid from funds appropriated to the department.

(d) In addition to the payments for minimum staff appraisers authorized by this Code section, the commissioner, from funds appropriated for that purpose, shall pay to qualified appraisers employed by county governments salary supplements in accordance with the following provisions:

(1) Each individual employed as a staff appraiser who has earned the Certified Assessment Evaluator designation or the Certified Personalty Evaluator designation, as conferred by the International Association of Assessing Officers, shall be paid a salary supplement of $1,000.00 per year;

(2) Each individual employed as a staff appraiser who has earned the Georgia Certified Appraiser designation conferred by the Georgia Association of Assessing Officials shall be paid a salary supplement of $750.00 per year. The qualifications and requirements necessary for achievement of the Georgia Certified Appraiser designation shall be approved by the commissioner before any supplements are paid for this designation; and

(3) Salary supplements shall be paid to each individual qualifying under paragraphs (1) and (2) of this subsection only for the period of time he or she is actually employed by a county as a staff appraiser and only for the period of time that he or she holds the qualifying designation. Salary supplements shall be paid to each qualified individual for only one qualifying designation at any one time. (Ga. L. 1972, p. 1104, § 9; Code 1933, § 91A-1409, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-92/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted "Department of Administrative Services" for "State Personnel Administration" in subsection (a); and twice inserted "or she" in the first sentence of paragraph (d)(3).

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

48-5-274. (For effective date, see note.) Establishment of equalized adjusted property tax digest; establishment and use of average ratio; information to be furnished by state auditor; grievance procedure; information to be furnished by commissioner.

(a) As used in this Code section, the term:

(1) "Assessment ratio" means the fractional relationship between the assessed value and the fair market value of the property.

(2) "Measures of central tendency" means the tendency of data to cluster around some typical or central value, such as the median ratio, the mean ratio, or the weighted mean ratio (the weighted mean ratio is also called the aggregate ratio), as defined in the Standard on Assessment-Ratio Studies published by the International Association of Assessing Officers.

(b) The state auditor shall establish on a continuing basis, no later than November 15 in each year, an equalized adjusted property tax digest for each county in the state and for the state as a whole for the current calendar year. Such digest shall exclude all real and personal property exempted from taxation and the difference between the value of all taxable property within any tax allocation district and the tax allocation increment base of such tax allocation district as defined under paragraph (15) of Code Section 36-44-3 for which consent has been obtained pursuant to Code Section 36-44-9. The state auditor may establish a unit within the Department of Audits and Accounts consisting of such number of personnel as is deemed necessary in order to establish and maintain on a continuing basis the equalized adjusted property tax digest. The equalized adjusted property tax digest shall be established and maintained as follows:

(1) Determine the locally assessed valuation of the county property tax assessment digest for the preceding calendar year, exclusive of real and personal property exempted from taxation, exclusive of the difference between the value of all taxable property within any tax allocation district and the tax allocation increment base of such tax allocation district as defined under paragraph (15) of Code Section 36-44-3 for which consent has been obtained pursuant to Code Section 36-44-9, exclusive of railroad equipment company property shown on the county railroad equipment company property tax digest, exclusive of any property subject to current use valuation on the county property tax digest, and exclusive of the locally assessed valuation of timber harvested or sold;

(2) Determine the fair market value for timber harvested or sold during the calendar year;

(3) Divide the sum of the locally assessed valuation of the county property tax assessment digest under paragraph (1) of this subsection by the ratio of assessed value to fair market value of the property established by the state auditor in accordance with paragraph (8) of this subsection;

(4) Determine the fair market value of the county railroad equipment company property tax digest for the preceding calendar year;

(5) Determine the sum of the current use valuation of the county property tax digest;

(6) Determine the total fair market value of the Public Utility Digest as established by the commissioner;

(7) The total of the sums obtained through the calculations prescribed in paragraphs (2), (3), (4), (5), and (6) of this subsection shall be known as the current equalized adjusted property tax digest of the county. The sum of the current equalized adjusted property tax digest of all counties of the state combined shall be known as the current equalized adjusted property tax digest for the state as a whole; and

(8) (For effective date, see note.) Establish for each county in the state the ratio of assessed value to fair market value of county property subject to taxation, excluding railroad equipment company property. The ratio shall be determined by establishing the ratio of assessed value to sales price for each of a representative number of parcels of real property, the titles to which were transferred during a period of time to be determined by the state auditor, and then by establishing the measure of central tendency for the county as a whole based upon a representative number of usable transactions studied. Any such sales price shall be adjusted upward or downward, in a manner consistent with the Standard on Ratio Studies published by the International Association of Assessing Officers or its successors, as reasonably needed to account for the effects of price changes reflected in the market between the date of sale and January 1 of the calendar year for which the equalized adjusted property tax digest is being prepared. Sales prices also shall be reduced by any portion thereof attributable to personal property, real property exempt from taxation, or standing timber included in the sales transaction. The representative number of transactions shall not include any parcel of which the sales price is not reflective of the fair market value of such property as fair market value is defined in Code Section 48-5-2. The state auditor shall supplement realty sales price data available in any county with actual appraisals of a representative number of parcels of farm property and industrial and commercial property located within the county, the titles to which were not transferred within the period of time determined by the state auditor. The state

auditor may make appraisals on other types of real property located within the county when adequate realty sales data cannot be obtained on such property. The representative number of parcels of each class of real property as defined by the commissioner used for the study shall be determined by the state auditor. The state auditor may use the same ratio for other personal property, excluding motor vehicles, within the county as is finally determined for real property within the county.

(c) The assessment ratio of assessed value to fair market value of county property to be established by the state auditor for the purposes of paragraph (8) of subsection (b) of this Code section shall be established through the use of personnel of the Department of Audits and Accounts who have sufficient competence and expertise by way of education, training, and experience in the fields of property evaluation and appraisal techniques. The Department of Audits and Accounts shall use the Standard on Assessment-Ratio Studies published by the International Association of Assessing Officers or its successors to determine the valid transactions necessary to establish accurately the measure of central tendency described in paragraph (8) of subsection (b) of this Code section; provided, however, that standard shall only be used to the extent it does not conflict with criteria enumerated in subparagraph (B) of paragraph (3) of Code Section 48-5-2.

(d) The assessment ratio of assessed value to fair market value determined for each county shall be used as provided for in this Code section until such time as a new ratio is determined on a continuing basis for each county. The state auditor shall provide to the commissioner the assessment ratio of assessed value to fair market value for all counties upon completion.

(e) On or before November 15 of each year, the state auditor shall furnish to the State Board of Education the current equalized adjusted property tax digest of each county in the state and the current equalized adjusted property tax digest for the state as a whole. In any county which has more than one school system, the state auditor shall furnish the State Board of Education a breakdown of the current county equalized adjusted property tax digest showing the amount of the digest applicable to property located within each of the school systems located within the county. At the same time, the state auditor shall furnish the governing authority of each county, the governing authority of each municipality having an independent school system, the local board of education of each school system, the tax commissioner or tax collector of each county, and the board of tax assessors of each county the current equalized adjusted property tax digest of the local school system or systems, as the case may be, and the current equalized adjusted property tax digest for the state as a whole.

(f)(1) Each county governing authority, each governing authority of a municipality having an independent school system, and each local board of education, when aggrieved or when having an aggrieved constituent, shall have a right, upon written request made within 30 days after receipt of the digest information, to refer the question of correctness of the current equalized adjusted property tax digest of the local school system to the state auditor. The state auditor shall take any steps necessary to make a determination of the correctness of the digest and to notify all interested parties of the determination within 45 days after receiving the request questioning the correctness of the digest.

(2)(A) If any party questioning the correctness of the digest is dissatisfied with the determination made by the state auditor pursuant to paragraph (1) of this subsection, the party shall have the right, which must be exercised within 15 days after being notified of the determination made by the state auditor, to refer in writing the question of the correctness of the digest to a board of arbitrators.

(B) Each board of arbitrators shall consist of three members, one to be chosen by the state auditor within 15 days after receipt of a written complaint, one to be chosen by the complaining party at the time of requesting the arbitration, and one to be chosen within 15 days after selection of the first two members by the first two members of the board. In the event the two arbitrators cannot agree on a third member, the Chief Justice of the Supreme Court of Georgia shall appoint the third member upon petition of either party with notice to the opposing party.

(C) The board of arbitrators or a majority of the board within 15 days after appointment of the full board shall render its decision regarding the correctness of the digest in question and, if correction of the digest is required, regarding the extent and manner in which the digest should be corrected. The decision of the board shall be final.

(D) The state auditor shall correct the digest in question in accordance with the decision of the board of arbitrators and shall report the corrections to the parties entitled to receive such information under this Code section.

(E) Each member of the board of arbitrators shall subscribe to an oath to perform faithfully and impartially the duties required in connection with the controversy concerning the correctness of the digest in question and to render a decision within the time required. Each member of the board of arbitrators shall be paid a sum not to exceed $250.00 for each appeal heard. In addition, each

member of the board shall receive the same daily expense allowance as is provided for each member of the General Assembly and actual transportation costs when traveling by public carrier or the legal mileage rate when traveling by personal automobile. All costs of arbitration of matters arising under this Code section shall be shared and paid equally by the Department of Audits and Accounts and by the governing authority requesting the arbitration.

(3) Upon receiving notice that the current equalized adjusted property tax digest of any local school system is being questioned pursuant to paragraph (1) of this subsection, the state auditor shall notify the State Board of Education that the digest is being questioned. No computations shall be made on the basis of a questioned digest under Article 6 of Chapter 2 of Title 20, the "Quality Basic Education Act," until the digest has been corrected, if necessary, pursuant to this subsection.

(g) The commissioner shall provide to the state auditor such digest information as is needed in the calculation of the equalized adjusted property tax digests. Such information shall be provided for each county and for each local school system. For independent school systems in municipalities authorized to assess property in excess of 40 percent of fair market value pursuant to Code Section 48-5-7, the commissioner shall provide digest information to the state auditor at the assessment ratios utilized by both the municipal government and the county government or governments in which the municipality is located. If revision is made to the digest of any county or any portion of a county comprising a local school system following the initial reporting of the digest to the state auditor, the commissioner shall report any such revision to the state auditor. (Ga. L. 1970, p. 542, §§ 1-5; Ga. L. 1972, p. 829, §§ 1-7; Code 1933, § 91A-1416, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1988, p. 1568, § 2; Ga. L. 1989, p. 597, § 1; Ga. L. 1991, p. 1801, §§ 1, 2; Ga. L. 1991, p. 1903, § 11; Ga. L. 1993, p. 699, § 1; Ga. L. 2000, p. 1683, § 1; Ga. L. 2007, p. 707, § 1/HB 182; Ga. L. 2009, p. 27, § 3/SB 55; Ga. L. 2015, p. 1219, § 11/HB 202.)

Delayed effective date. — Paragraph (b)(8), as set out above, becomes effective January 1, 2016. For version of paragraph (b)(8) in effect until January 1, 2016, see the 2015 amendment note.

The 2015 amendment, effective January 1, 2016, added the third and fourth sentences in paragraph (b)(8).

PART 2

COUNTY BOARDS OF TAX ASSESSORS

48-5-295.1. Performance review board.

(a) The county governing authority may, upon adoption of a resolution, request that a performance review of the county board of tax assessors be conducted. Such resolution shall be transmitted to the commissioner who shall appoint an independent performance review board within 30 days after receiving such resolution. The commissioner shall appoint three competent persons to serve as members of the performance review board, one of whom shall be an employee of the department and two of whom shall be chief appraisers, provided that neither chief appraiser shall be a chief appraiser for the county under review.

(b) It shall be the duty of a performance review board to make a thorough and complete investigation of the county board of tax assessors with respect to all actions of the county board of tax assessors and appraisal staff regarding the technical competency of appraisal techniques and compliance with state law and regulations, including the Property Tax Appraisal Manual. The performance review board shall issue a written report of its findings to the commissioner and the county governing authority which shall include such evaluations, judgments, and recommendations as it deems appropriate. The county governing authority shall reimburse the members of the performance review board for reasonable expenses incurred in the performance of their duties, including mileage, meals, lodging, and costs of materials.

(c) The findings of the report of the review board under subsection (b) of this Code section or of any audit performed by the Department of Revenue at the request of the Governor may be grounds for removal of one or more members of the county board of tax assessors pursuant to subsection (b) of Code Section 48-5-295.

(d) The commissioner shall promulgate such rules and regulations as may be necessary for the administration of this Code section. (Code 1981, § 48-5-295.1, enacted by Ga. L. 2000, p. 1370, § 3; Ga. L. 2002, p. 1009, § 1; Ga. L. 2005, p. 159, § 6/HB 488; Ga. L. 2013, p. 655, § 3/HB 197.)

The 2013 amendment, effective July 1, 2013, substituted "shall be chief appraisers, provided that neither chief appraiser shall be" for "shall be assessors or chief appraisers who are not members of the board or" near the end of subsection (a); and, in subsection (b), added ", including the Property Tax Appraisal Manual" at the end of the first sentence, and inserted "to the commissioner and the county governing authority" in the middle of the second sentence.

48-5-295.2. Independent performance review board; written report; withholding of funds.

(a) The commissioner shall appoint an independent performance review board if he or she determines, through the examination of the digest for any county in a digest review year pursuant to Code Section 48-5-342, that there is evidence which calls into question the technical competence of appraisal techniques and compliance with state law and regulations, including the Property Tax Appraisal Manual, with respect to the conservation use value of forest land.

(b) The commissioner shall appoint three competent persons to serve as members of the performance review board, one of whom shall be an employee of the department and two of whom shall be chief appraisers, provided that neither chief appraiser shall be a chief appraiser for the county under review.

(c) The performance review board shall issue a written report of its findings to the commissioner and the county governing authority which shall include such evaluations, judgments, and recommendations as it deems appropriate. The county governing authority shall reimburse the members of the performance review board for reasonable expenses incurred in the performance of their duties, including mileage, meals, lodging, and costs of materials.

(d) The findings of the report of the review board under subsection (c) of this Code section or of any audit performed by the Department of Revenue or the Department of Audits shall be grounds for the state to withhold local assistance grants pursuant to Code Section 48-5A-3; provided, however, that any portion of a local assistance grant designated for use by a board of education of any political subdivision shall not be withheld pursuant to this subsection. If the findings in the report of the performance review board indicate that the provisions of paragraph (6) of Code Section 48-5-2 have been knowingly violated by a local government in order to receive a larger local assistance grant than allowed by law, then the most recent local assistance grant requested by the local government shall be withheld by the Department of Revenue. For a second or subsequent offense, the next two requests for local assistance grants shall be withheld by the Department of Revenue.

(e) The commissioner shall promulgate such rules and regulations as may be necessary for the administration of this Code section. (Code 1981, § 48-5-295.2, enacted by Ga. L. 2013, p. 655, § 4/HB 197.)

Effective date. — This Code section became effective July 1, 2013.

48-5-296. Removal from office on petition of freeholders; appeals.

JUDICIAL DECISIONS

Cited in We, the Taxpayers v. Bd. of Tax Assessors, 292 Ga. 31, 734 S.E.2d 373 (2012).

48-5-299. (For effective date, see note.) Ascertainment of taxable property; assessments against unreturned personal property; penalty for unreturned property; changing real property values established by appeal in prior year or stipulated by agreement.

(a) It shall be the duty of the county board of tax assessors to investigate diligently and to inquire into the property owned in the county for the purpose of ascertaining what real and personal property is subject to taxation in the county and to require the proper return of the property for taxation. The board shall make such investigation as may be necessary to determine the value of any property upon which for any reason all taxes due the state or the county have not been paid in full as required by law. In all cases where the full amount of taxes due the state or county has not been paid, the board shall assess against the owner, if known, and against the property, if the owner is not known, the full amount of taxes which has accrued and which may not have been paid at any time within the statute of limitations. In all cases where taxes are assessed against the owner of property, the board may proceed to assess the taxes against the owner of the property according to the best information obtainable; and such assessment, if otherwise lawful, shall constitute a valid lien against the property so assessed.

(b) (For effective date, see note.) In all cases in which unreturned personal property is assessed by the board after the time provided by law for making tax returns has expired, the board shall add to the assessment of the property a penalty of 10 percent, which shall be included as a part of the taxable value for the year.

(c) (For effective date, see note.) When the value of real property is reduced or is unchanged from the value on the initial annual notice of assessment and such valuation is established as the result of either an appeal decision rendered pursuant to Code Section 48-5-311 or stipulated by agreement of the parties to such an appeal that this subsection shall apply in any year, the valuation so established by appeal decision or agreement may not be increased by the board of tax assessors during the next two successive years, subject to the following exceptions:

(1) This subsection shall not apply to a valuation established by an appeal decision if the taxpayer or his or her authorized representa-

tive failed to attend the appeal hearing or provide the board of equalization, hearing officer, or arbitrator with some written evidence supporting the taxpayer's opinion of value;

(2) This subsection shall not apply to a valuation established by an appeal decision or agreement if the taxpayer files a return at a different valuation during the next two successive years;

(3) If the taxpayer files an appeal pursuant to Code Section 48-5-311 during the next two successive years, the board of equalization, hearing officer, or arbitrator may increase or decrease the value of the real property based on the evidence presented by the parties during the appeal process; and

(4) The board of tax assessors may increase or decrease the value of the real property if, after a visual on-site inspection of the property, it is found that there have been substantial additions, deletions, or improvements to such property or that there are errors in the board of tax assessors' records as to the description or characterization of the property, or the board of tax assessors finds an occurrence of other material factors that substantially affect the current fair market value of such property.

(d) When real or personal property is located within a municipality whose boundaries extend into more than one county, it shall be the duty of each board of tax assessors of a county, wherein a portion of the municipality lies, to cooperatively investigate diligently into whether the valuation of such property is uniformly assessed with other properties located within the municipality but outside the county where such property is located. Such investigation shall include, but is not limited to, an analysis of the assessment to sales ratio of properties that have recently sold within the municipality and a comparison of the average assessment level of such properties by the various counties wherein a portion of the municipality lies. The respective boards shall exchange such information as will facilitate this investigation and make any necessary adjustments to the assessment of the real and personal property that is located in their respective counties within the municipality to achieve a uniform assessment of such property throughout the municipality. Any uniformity adjustments pursuant to this subsection shall only apply to the assessment used for municipal ad valorem tax purposes within the applicable county. (Ga. L. 1913, p. 123, § 7; Code 1933, § 92-6913; Ga. L. 1937, p. 517, § 3; Ga. L. 1976, p. 1042, § 1; Ga. L. 1976, p. 1071, § 1; Code 1933, § 91A-1440, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1994, p. 786, § 1; Ga. L. 2000, p. 873, § 1; Ga. L. 2006, p. 431, § 1/HB 560; Ga. L. 2015, p. 1219, § 12/HB 202.)

Delayed effective date. — Subsections (b) and (c), as set out above, become effective January 1, 2016. For versions of subsections (b) and (c) in effect until January 1, 2016, see the 2015 amendment note.

The 2015 amendment, effective January 1, 2016, substituted the present provisions of subsections (b) and (c) for the former provisions, which read: "(b)(1) In all cases where unreturned property is assessed by the county board of tax assessors after the time provided by law for making tax returns has expired, the board shall add to the amount of state and county taxes due a penalty of 10 percent of the amount of the tax due or, if the principal sum of the tax so assessed is less than $10.00 in amount, a penalty of $1.00. The penalty provided in this subsection shall be collected by the tax collector or the tax commissioner and in all cases shall be paid into the county treasury and shall remain the property of the county.

"(2)(A) The provisions of paragraph (1) of this subsection to the contrary notwithstanding, this paragraph shall apply with respect to counties having a population of 600,000 or more according to the United States decennial census of 1970 or any future such census.

"(2)(B) In all cases in which unreturned property is assessed by the board after the time provided by law for making tax returns has expired, the board shall add to the assessment of the property a penalty of 10 percent, which shall be included as a part of the taxable value for the year.

"(c) Real property, the value of which was established by an appeal in any year, that has not been returned by the taxpayer at a different value during the next two successive years, may not be changed by the board of tax assessors during such two years for the sole purpose of changing the valuation established or decision rendered in an appeal to the board of equalization or superior court. In such cases, before changing such value or decision, the board of assessors shall first conduct an investigation into factors currently affecting the fair market value. The investigation necessary shall include, but not be limited to, a visual on-site inspection of the property to ascertain if there have been any additions, deletions, or improvements to such property or the occurrence of other factors that might affect the current fair market value. If a review to determine if there are any errors in the description and characterization of such property in the files and records of the board of tax assessors discloses any errors, such errors shall not be the sole sufficient basis for increasing the valuation during the two-year period." See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 1219, § 27(c)/HB 202, not codified by the General Assembly, provides, in part, that Sections 9, 12, and 15 of this Act shall be applicable to all appeals filed on or after January 1, 2016.

JUDICIAL DECISIONS

Amended notices unauthorized. — Trial court did not err in ruling that a county board of tax assessors (BOA) lacked authority under O.C.G.A. § 48-5-299(a) to issue two corrected property tax assessment notices that increased the fair market value of taxpayers' property because the BOA's second and third corrected notices were not authorized since the notices were not sent merely to remedy a clerical error but to revise the BOA's view of the proper value of the property during a pending appeal of the prior year valuation; retroactive amendments to assessments are prohibited absent a clerical error or some other lawful basis. Douglas County Bd. of Assessors v. Denyse, 314 Ga. App. 266, 723 S.E.2d 705 (2012).

Award of attorney's fees when issue was "freeze" on property value.

Final property valuation that was set by operation of law pursuant to O.C.G.A. § 48-5-299(c) based on a prior tax year appeal did not preclude an award of attorney's fees and costs under O.C.G.A. § 48-5-311(g)(4)(B)(ii). Fulton County Bd. of Tax Assessors v. LM Atlanta Airport, LLC, 313 Ga. App. 439, 721 S.E.2d 640 (2011).

Mandamus relief properly denied since certification of appeals obtained. — Trial court did not err by denying a group of property owners their request for mandamus relief in the nature of finding that the county board of tax assessors certified their property tax appeals because it was undisputed that the tax appeals were physically delivered to the trial court and that it had ruled that such appeals were certified to it, thus, the property owners received the relief sought regarding certification. Newton Timber Co., L.L.L.P. v. Monroe County Bd. of Tax Assessors, 755 S.E.2d 770 (2014).

48-5-302. Time for completion of revision and assessment of returns; submission of completed digest to commissioner.

Each county board of tax assessors shall complete its revision and assessment of the returns of taxpayers in its respective county by July 15 of each year, except that, in all counties providing for the collection and payment of ad valorem taxes in installments, such date shall be June 1 of each year. The tax receiver or tax commissioner shall then immediately forward one copy of the completed digest to the commissioner for examination and approval. (Ga. L. 1913, p. 123, § 10; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-6917; Ga. L. 1945, p. 251, § 1; Code 1933, § 91A-1444, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 538, § 5; Ga. L. 1982, p. 575, §§ 5, 12; Ga. L. 1984, p. 22, § 48; Ga. L. 1992, p. 1191, § 1; Ga. L. 1997, p. 963, § 4; Ga. L. 2010, p. 878, § 48/HB 1387; Ga. L. 2015, p. 1219, § 13/HB 202.)

The 2015 amendment, effective July 1, 2015, substituted "July 15" for "July 1" in the first sentence of this Code section.

48-5-304. Conditions, procedures, and limitations on approval of tax digests when assessments in arbitration or on appeal; withholding of grants by Office of the State Treasurer.

(a) The commissioner shall not approve any digest of any county when the assessed value that is in dispute for any property or properties on appeal or in arbitration exceeds 5 percent of the total assessed value of the total taxable digest of the county for the same year. In any year in which a complete revaluation or reappraisal program is implemented, the commissioner shall not approve a digest of any county when 8 percent or more of the assessed value in dispute is in arbitration or on appeal and 8 percent or more of the number of properties is in arbitration or on appeal. When the assessed value in dispute on any one appeal or arbitration exceeds 1.5 percent of the total assessed value of the total taxable digest of the county for the same year, such appeal or arbitration may be excluded by the commissioner in making his or her determination of whether the digest may be

approved under the limitations provided for in this Code section. Where appeals have been filed or arbitrations demanded, the assessment or assessments fixed by the board of tax assessors shall be listed together with the return value on the assessments and forwarded in a separate listing to the commissioner at the time the digest is filed for examination and approval.

(b) The commissioner shall not approve any digest or portion thereof for any class or strata of property where evidence exists that the county has substantially failed to comply with the provisions of this title or the rules and regulations of the commissioner for valuation of such class or strata of property. The commissioner shall adopt rules and regulations to give effect to this provision.

(c) The Office of the State Treasurer shall withhold any and all grants appropriated to any county until the county tax digest for the previous calendar year has been submitted to the commissioner as required by law. (Ga. L. 1971, p. 301, §§ 1, 2; Ga. L. 1972, p. 824, § 1; Code 1933, § 91A-1445, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48; Ga. L. 1986, p. 747, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 2000, p. 136, § 48; Ga. L. 2000, p. 1705, § 1; Ga. L. 2010, p. 863, § 2/SB 296; Ga. L. 2010, p. 1104, § 11-1/SB 346; Ga. L. 2014, p. 672, § 3/HB 755.)

The 2014 amendment, effective July 1, 2014, substituted the present provisions of subsection (a) for the former provisions, which read: "The commissioner shall not be required to disapprove or withhold approval of the digest of any county solely because appeals have been filed or arbitrations demanded on the assessment of any property or number of properties in the county. Where appeals have been filed or arbitrations demanded, the assessment or assessments fixed by the board of tax assessors shall be listed together with the return value on the assessments and forwarded in a separate listing to the commissioner at the time the digest is filed for examination and approval."; added subsection (b); and redesignated former subsection (b) as present subsection (c).

48-5-306. (For effective date, see note.) Annual notice of current assessment; contents; posting notice; new assessment description.

(a) **Method of giving annual notice of current assessment to taxpayer.** Each county board of tax assessors may meet at any time to receive and inspect the tax returns to be laid before it by the tax receiver or tax commissioner. The board shall examine all the returns of both real and personal property of each taxpayer, and if in the opinion of the board any taxpayer has omitted from such taxpayer's returns any property that should be returned or has failed to return any of such taxpayer's property at its fair market value, the board shall correct the returns, assess and fix the fair market value to be placed on the property, make a note of such assessment and valuation, and attach the

note to the returns. The board shall see that all taxable property within the county is assessed and returned at its fair market value and that fair market values as between the individual taxpayers are fairly and justly equalized so that each taxpayer shall pay as nearly as possible only such taxpayer's proportionate share of taxes. The board shall give annual notice to the taxpayer of the current assessment of taxable real property. When any corrections or changes, including valuation increases or decreases, or equalizations have been made by the board to personal property tax returns, the board shall give written notice to the taxpayer of any such changes made in such taxpayer's returns. The annual notice may be given personally by leaving the notice at the taxpayer's dwelling house, usual place of abode, or place of business with some person of suitable age and discretion residing or employed in the house, abode, or business, or by sending the notice through the United States mail as first-class mail to the taxpayer's last known address. The taxpayer may elect in writing to receive all such notices required under this Code section by electronic transmission if electronic transmission is made available by the county board of tax assessors. When notice is given by mail, the county board of tax assessors' return address shall appear in the upper left corner of the face of the mailing envelope and with the United States Postal Service endorsement "Return Service Requested" and the words "Official Tax Matter" clearly printed in boldface type in a location which meets United States Postal Service regulations.

(b) **Contents of notice.**

(1) The annual notice of current assessment required to be given by the county board of tax assessors under subsection (a) of this Code section shall be dated and shall contain the name and last known address of the taxpayer. The annual notice shall conform with the state-wide uniform assessment notice which shall be established by the commissioner by rule and regulation and shall contain:

(A) The amount of the previous assessment;

(B) The amount of the current assessment;

(C) The year for which the new assessment is applicable;

(D) A brief description of the assessed property broken down into real and personal property classifications;

(E) The fair market value of property of the taxpayer subject to taxation and the assessed value of the taxpayer's property subject to taxation after being reduced;

(F) The name, phone number, and contact information of the person in the assessors' office who is administratively responsible for the handling of the appeal and who the taxpayer may contact if

the taxpayer has questions about the reasons for the assessment change or the appeals process;

(G) If available, the website address of the office of the county board of tax assessors; and

(H) A statement that all documents and records used to determine the current value are available upon request.

(2)(A) In addition to the items required under paragraph (1) of this subsection, the notice shall contain a statement of the taxpayer's right to an appeal and an estimate of the current year's taxes for all levying authorities which shall be in substantially the following form:

"The amount of your ad valorem tax bill for this year will be based on the appraised and assessed values specified in this notice. You have the right to appeal these values to the county board of tax assessors. At the time of filing your appeal you must select one of the following options:

(i) An appeal to the county board of equalization with appeal to the superior court;

(ii) To arbitration without an appeal to the superior court; or

(iii) (For effective date, see note.) For a parcel of nonhomestead property with a fair market value in excess of $750,000.00, or for one or more account numbers of wireless property as defined in subparagraph (e.1)(1)(B) of Code Section 48-5-311 with an aggregate fair market value in excess of $750,000.00, to a hearing officer with appeal to the superior court.

If you wish to file an appeal, you must do so in writing no later than 45 days after the date of this notice. If you do not file an appeal by this date, your right to file an appeal will be lost. For further information on the proper method for filing an appeal, you may contact the county board of tax assessors which is located at: (insert address) and which may be contacted by telephone at: (insert telephone number)."

(B) (For effective date, see note.) The notice shall also contain the following statements in bold print:

"The estimate of your ad valorem tax bill for the current year is based on the previous or most applicable year's millage rate and the fair market value contained in this notice. The actual tax bill you receive may be more or less than this estimate. This estimate may not include all eligible exemptions."

(3) The annual notice required under this Code section shall be mailed no later than July 1; provided, however, that the annual notice required under this Code section may be sent later than July 1 for the purpose of notifying property owners of corrections and mapping changes.

(c) **Posting notice on certain conditions.** In all cases where a notice is required to be given to a taxpayer under subsection (a) of this Code section, if the notice is not given to the taxpayer personally or if the notice is mailed but returned undelivered to the county board of tax assessors, then a notice shall be posted in front of the courthouse door or shall be posted on the website of the office of the county board of tax assessors for a period of 30 days. Each posted notice shall contain the name of the owner liable to taxation, if known, or, if the owner is unknown, a brief description of the property together with a statement that the assessment has been made or the return changed or altered, as the case may be, and the notice need not contain any other information. The judge of the probate court of the county shall make a certificate as to the posting of the notice. Each certificate shall be signed by the judge and shall be recorded by the county board of tax assessors in a book kept for that purpose. A certified copy of the certificate of the judge duly authenticated by the secretary of the board shall constitute prima-facie evidence of the posting of the notice as required by law.

(d) **(For effective date, see note.) Records and information availability.** Notwithstanding the provisions of Code Section 50-18-71, in the case of all public records and information of the county board of tax assessors pertaining to the appraisal and assessment of real property:

(1) The taxpayer may request, and the county board of tax assessors shall provide within ten business days, copies of such public records and information, including, but not limited to, a description of the methodology used by the board of tax assessors in setting the property's fair market value, all documents reviewed in making the assessment, the address and parcel identification number of all real property utilized as qualified comparable properties, and all factors considered in establishing the new assessment, at a uniform copying fee not to exceed 25¢ per page;

(2) No additional charges or fees may be collected from the taxpayer for reasonable search, retrieval, or other administrative costs associated with providing such public records and information; and

(3)(A) The superior courts of this state shall have jurisdiction in law and in equity to entertain actions against the board of tax assessors to enforce compliance with the provisions of this subsection.

(B) In any action brought to enforce the provisions of this subsection in which the court determines that either party acted without substantial justification either in not complying with this subsection or in instituting the litigation, the court shall, unless it finds that special circumstances exist, assess in favor of the complaining party reasonable attorney's fees and other litigation costs reasonably incurred. Whether the position of the complaining party was substantially justified shall be determined on the basis of the record as a whole which is made in the proceeding for which fees and other expenses are sought.

(e) **Description of current assessment.** The notice required by this Code section shall be accompanied by a simple, nontechnical description of the basis for the current assessment.

(f) The commissioner shall promulgate such rules and regulations as may be necessary for the administration of this Code section. (Ga. L. 1913, p. 123, § 6; Code 1933, § 92-6911; Ga. L. 1937, p. 517, § 2; Ga. L. 1970, p. 580, § 1; Ga. L. 1971, p. 33, § 1; Ga. L. 1972, p. 1114, § 5; Ga. L. 1974, p. 609, § 1; Ga. L. 1975, p. 1083, § 2; Ga. L. 1976, p. 518, § 2; Code 1933, § 91A-1448, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1985, p. 1262, § 2; Ga. L. 1994, p. 1823, § 1; Ga. L. 1999, p. 1043, § 2; Ga. L. 1999, p. 1212, § 1; Ga. L. 2009, p. 27, § 4/SB 55; Ga. L. 2009, p. 216, § 2C/SB 240; Ga. L. 2010, p. 1104, § 1-1/SB 346; Ga. L. 2015, p. 1219, § 14/HB 202.)

Delayed effective date. — Division (b)(2)(A)(iii), subparagraph (b)(2)(B), and subsection (d), as set out above, become effective January 1, 2016. For versions of division (b)(2)(A)(iii), subparagraph (b)(2)(B), and subsection (d) in effect until January 1, 2016, see the 2015 amendment note.

The 2015 amendment, effective January 1, 2016, in division (b)(2(A)(iii), substituted "$750,000.00, or for one or more account numbers of wireless property as defined in subparagraph (e.1)(1)(B) of Code Section 48-5-311 with an aggregate fair market value in excess of $750,000.00" for "$1 million"; in subparagraph (b)(2)(B), substituted "statements" for "statement" in the introductory language and inserted "or most applicable" in the first sentence of the notice; and, in subsection (d), in paragraph (1), inserted "a description of the methodology used by the board of tax assessors in setting the property's fair market value," deleted "and" from the end, in paragraph (2), added "; and" to the end, and added paragraph (3).

JUDICIAL DECISIONS

Analysis

General Consideration

Action of board outside the board's authority is void, etc.

Trial court did not err in denying the plaintiff's request for a mandamus nisi because the Open Records Act, O.C.G.A. § 50-14-1 et seq., was not available to enforce compliance with the plaintiff's requests for information from the county board of tax assessors regarding property tax assessments as those requests were made pursuant to O.C.G.A. § 48-5-306 and not the Open Records Act. Hansen v. DeKalb County Board of Tax Assessors, 295 Ga. 385, 761 S.E.2d 35 (2014).

Requirements from county board of tax assessors regarding information requests. — Trial court did not err in denying the plaintiff's request for a mandamus nisi because the plaintiff's request for mandamus was unsupportable as a matter of law as it was undisputed that the county board of tax assessors provided various documents in response to the plaintiff's information requests regarding property tax assessments, and the plaintiff's demands for supplementation of the responses and an explanation of those responses in a recorded meeting session strayed far beyond what was required by this statute. Hansen v. DeKalb County Board of Tax Assessors, 295 Ga. 385, 761 S.E.2d 35 (2014).

Cited in Coffman Grading Co. v. Forsyth County, 303 Ga. App. 836, 695 S.E.2d 310 (2010).

Valuation of Property

Valuation of leasehold estates. — Trial court erred in dismissing for failure to state a claim upon which relief could be granted a taxpayer's petition seeking a declaration that the valuation method a county board of assessors and the development authority of the county used for leasehold estates arising from a local development authority sale-leaseback bond transaction was illegal and in granting the authority's motion for judgment on the pleadings because the taxpayer made material allegations that could be supported by admissible evidence on the issue of whether the valuation method fairly and justly approximated the fair market value of a bond transaction leasehold estate, and the board and authority failed to show that they were clearly entitled to judgment; although O.C.G.A. § 36-80-16.1(e) gave county boards of tax assessors authority to use simplified methods for determining the value of a bond transaction leasehold estate, the statute did not relieve the board and authority from their duty to value the leasehold estate at the estate's fair market value, and any contention that the statute did allow the board and authority to value a bond transaction leasehold estate at less than the estate's fair market value would make the statute illegal and unconstitutional. Sherman v. Fulton County Bd. of Assessors, 288 Ga. 88, 701 S.E.2d 472 (2010).

Failure to show entitlement to mandamus relief. — In a taxpayer's suit against a county and officials (the county), the court upheld the grant of summary judgment to the county because the taxpayer's mandamus claims failed for the simple reason that the claim adduced no evidence that any actual assessment of any particular property was other than at fair market value or that the county had failed to comply with the county's legal duty to see that all taxable property within the county is assessed and returned for taxes at the property's fair market value. SJN Props., LLC v. Fulton County Bd. of Assessors, 296 Ga. 793, 770 S.E.2d 832 (2015).

Notice

Failure to mail or file notice of appeal within 30 days. — Failure of limited liability companies (LLC) to satisfy the requirement of O.C.G.A. § 48-5-311 (e)(2)(A) barred any further right to appeal because the letters and returns the LLCs' representative submitted months before the assessment notices were mailed did not excuse the LLCs from complying with the requirement of O.C.G.A. § 48-5-311(e)(2)(A) that a taxpayer mail or file a notice of appeal within 30 days from the date of mailing the notice pursuant to O.C.G.A. § 48-5-306; because the LLCs failed to comply with O.C.G.A. § 48-5-311(e) so as to effectuate an appeal to the county board of equalization, the LLCs' appeals to the superior court should

Notice (Cont'd)

have been dismissed. Hall County Bd. of Tax Assessors v. Avalon Hills Partners, LLC, 307 Ga. App. 520, 705 S.E.2d 674 (2010).

48-5-311. (For effective date, see note.) Creation of county boards of equalization; duties; review of assessments; appeals.

(a) **Definition.**

As used in this Code section, the term "appeal administrator" means the clerk of the superior court.

(a.1) **Appeal administrator.**

(1) The appeal administrator is vested with administrative authority in all other matters governing the conduct and business of the boards of equalization so as to provide oversight and supervision of such boards.

(2) It shall be the duty of the appeal administrator to receive any complaint filed with respect to the official actions of any member of a county board of equalization regarding technical competency, compliance with state law and regulations, or rude or unprofessional conduct or behavior toward any member of the public and to forward such complaint to the grand jury for investigation. Following an investigation, the grand jury shall issue a written report of its findings, which shall include such evaluations, judgments, and recommendations as it deems appropriate. The findings of the report may be grounds for removal of a member of the board of equalization by the grand jury for failure to perform the duties required under this Code section.

(a.2) **Establishment of boards of equalization.**

(1) Except as otherwise provided in this subsection, there is established in each county of this state a county board of equalization to consist of three members and three alternate members appointed in the manner and for the term set forth in this Code section. In those counties having more than 10,000 parcels of real property, the county governing authority, by appropriate resolution adopted on or before November 1 of each year, may elect to have selected one additional county board of equalization for each 10,000 parcels of real property in the county or for any part of a number of parcels in the county exceeding 10,000 parcels.

(1.1) The grand jury shall be authorized to conduct a hearing following its receipt of the report of the appeal administrator under paragraph (2) of subsection (a.1) of this Code section and to remove one or more members of the board of equalization for failure to perform the duties required under this Code section.

(2) Notwithstanding any part of this subsection to the contrary, at any time the governing authority of a county makes a request to the grand jury of the county for additional alternate members of boards of equalization, the grand jury shall appoint the number of alternate members so requested to each board of equalization, such number not to exceed a maximum of 21 alternate members for each of the boards. The alternate members of the boards shall be duly qualified and authorized to serve on any of the boards of equalization of the county. The members of each board of equalization may designate a chairperson and two vice chairpersons of each such board of equalization. The appeal administrator shall have administrative authority in all matters governing the conduct and business of the boards of equalization so as to provide oversight and supervision of such boards and scheduling of appeals. Any combination of members or alternate members of any such board of equalization of the county shall be competent to exercise the power and authority of the board. Any person designated as an alternate member of any such board of equalization of the county shall be competent to serve in such capacity as provided in this Code section upon appointment and taking of oath.

(3) Notwithstanding any provision of this subsection to the contrary, in any county of this state having a population of 400,000 or more according to the United States decennial census of 1990 or any future such census, the governing authority of the county, by appropriate resolution adopted on or before November 1 of each year, may elect to have selected one additional county board of equalization for each 10,000 parcels of real property in the county or for any part of a number of parcels in the county exceeding 10,000 parcels. In addition to the foregoing, any two members of a county board of equalization of the county may decide an appeal from an assessment, notwithstanding any other provisions of this Code section. The decision shall be in writing and signed by at least two members of the board of equalization; and, except for the number of members necessary to decide an appeal, the decision shall conform to the requirements of this Code section.

(4) The governing authorities of two or more counties may by intergovernmental agreement establish regional boards of equalization for such counties which shall operate in the same manner and be subject to all of the requirements of this Code section specified for county boards of equalization. The intergovernmental agreement shall specify the manner in which the members of the regional board shall be appointed by the grand jury of each of the counties, shall specify which appeal administrator shall have oversight over and supervision of such regional board, and shall provide for funding from each participating county for the operations of the appeal adminis-

trator as required by subparagraph (d)(4)(C.1) of this Code section. All hearings and appeals before a regional board shall be conducted in the county in which the property which is the subject of the hearing or appeal is located.

(b) **Qualifications of board of equalization members.**

(1) Each person who is, in the judgment of the appointing grand jury, qualified and competent to serve as a grand juror, who is the owner of real property located in the county where such person is appointed to serve, or, in the case of a regional board of equalization, is the owner of real property located in any county in the region where such person is appointed to serve, and who is at least a high school graduate shall be qualified, competent, and compellable to serve as a member or alternate member of the county board of equalization. No member of the governing authority of a county, municipality, or consolidated government; member of a county or independent board of education; member of the county board of tax assessors; employee of the county board of tax assessors; or county tax appraiser shall be competent to serve as a member or alternate member of the county board of equalization.

(2)(A) Each person seeking to be appointed as a member or alternate member of a county board of equalization shall, not later than immediately prior to the time of his or her appointment under subsection (c) of this Code section, file with the clerk of the superior court a uniform application form which shall be a public record. The Council of Superior Court Clerks of Georgia created under Code Section 15-6-50.2 shall design the form which indicates the applicant's education, employment background, experience, and qualifications for such appointment.

(B)(i) Within the first year after a member's initial appointment to the board of equalization each member shall satisfactorily complete not less than 40 hours of instruction in appraisal and equalization processes and procedures, as prepared and required by the commissioner pursuant to Code Section 48-5-13.

(ii) On or after January 1, 2016, following the completion of each term of office, a member shall, within the first year of appointment to the subsequent term of office, complete satisfactorily not less than 20 hours of instruction in appraisal and equalization processes and procedures, as prepared and required by the commissioner for newly appointed members.

(iii) No person shall be eligible to hear an appeal as a member of a board of equalization unless, prior to hearing such appeal, such person shall satisfactorily complete the 20 hours of instruction in appraisal and equalization processes and procedures

required under the applicable provisions of division (i) or (ii) of this subparagraph.

(iv) The failure of any member to fulfill the requirements of the applicable provisions of division (i) or (ii) of this subparagraph shall render such member ineligible to serve on the board; and the vacancy created thereby shall be filled in the same manner as other vacancies on the board are filled.

(C)(i) Any person appointed to a board of equalization shall be required to complete annually a continuing education requirement of at least eight hours of instruction in appraisal and equalization procedures, as prepared and required by the commissioner pursuant to Code Section 48-5-13.

(ii) The failure of any member to fulfill the requirements of division (i) of this subparagraph shall render such member ineligible to serve on the board; and the vacancy created thereby shall be filled in the same manner as other vacancies on the board are filled.

(c) **Appointment of board of equalization members.**

(1) Except as provided in paragraph (2) of this subsection, each member and alternate member of the county board of equalization shall be appointed for a term of three calendar years next succeeding the date of such member or such alternate member's selection. Each term shall begin on January 1.

(2) The grand jury in each county at any term of court preceding November 1 of 1991 shall select three persons who are otherwise qualified to serve as members of the county board of equalization and shall also select three persons who are otherwise qualified to serve as alternate members of the county board of equalization. The three individuals selected as alternates shall be designated as alternate one, alternate two, and alternate three, with the most recent appointee being alternate number three, the next most recent appointee being alternate number two, and the most senior appointee being alternate number one. One member and one alternate shall be appointed for terms of one year, one member and one alternate shall be appointed for two years, and one member and one alternate shall be appointed for three years. Each year thereafter, the grand jury of each county shall select one member and one alternate for three-year terms.

(3) If a vacancy occurs on the county board of equalization, the individual designated as alternate one shall then serve as a member of the board of equalization for the unexpired term. If a vacancy occurs among the alternate members, the grand jury then in session

or the next grand jury shall select an individual who is otherwise qualified to serve as an alternate member of the county board of equalization for the unexpired term. The individual so selected shall become alternate member three, and the other two alternates shall be redesignated appropriately.

(4) Within five days after the names of the members and alternate members of the county board or boards of equalization have been selected, the clerk of the superior court shall cause such appointees to appear before the clerk of the superior court for the purpose of taking and executing in writing the oath of office. The clerk of the superior court may utilize any means necessary for such purpose, including, but not limited to, telephonic or other communication, regular first-class mail, or issuance of and delivery to the sheriff or deputy sheriff a precept containing the names of the persons so selected. Within ten days of receiving the precept, the sheriff or deputy sheriff shall cause the persons whose names are written on the precept to be served personally or by leaving the summons at their place of residence. The summons shall direct the persons named on the summons to appear before the clerk of the superior court on a date specified in the summons, which date shall not be later than December 15.

(5) Each member and alternate member of the county board of equalization, on the date prescribed for appearance before the clerk of the superior court and before entering on the discharge of such member and alternate member's duties, shall take and execute in writing before the clerk of the superior court the following oath:

> "I, _____, agree to serve as a member of the board of equalization of the County of _____ and will decide any issue put before me without favor or affection to any party and without prejudice for or against any party. I will follow and apply the laws of this state. I also agree not to discuss any case or any issue with any person other than members of the board of equalization except at any appeal hearing. I shall faithfully and impartially discharge my duties in accordance with the Constitution and laws of this state, to the best of my skill and knowledge. So help me God.
>
> _____
>
> Signature of member or alternate member"

In addition to the oath of office prescribed in this paragraph, the presiding or chief judge of the superior court or the appeal administrator shall charge each member and alternate member of the county board of equalization with the law and duties relating to such office.

(d) **Duties and powers of board of equalization members.**

(1) The county board of equalization shall hear and determine appeals from assessments and denials of homestead exemptions as provided in subsection (e) of this Code section.

(2) If, in the course of determining an appeal, the county board of equalization finds reason to believe that the property involved in an appeal or the class of property in which is included the property involved in an appeal is not uniformly assessed with other property included in the digest, the board shall request the respective parties to the appeal to present relevant information with respect to that question. If the board determines that uniformity is not present, the board may order the county board of tax assessors to take such action as is necessary to obtain uniformity, except that, when a question of county-wide uniformity is considered by the board, the board may recommend a partial or total county-wide revaluation only upon a determination by a majority of all the members of the board that the clear and convincing weight of the evidence requires such action. The board of equalization may act pursuant to this paragraph whether or not the appellant has raised the issue of uniformity.

(3) The board shall establish procedures which comply strictly with the regulations promulgated by the commissioner pursuant to subparagraph (e)(1)(D) of this Code section for the conducting of appeals before the board. The procedures shall be entered into the minutes of the board, and a copy of the procedures shall be made available to any individual upon request.

(4)(A) The appeal administrator shall have oversight over and supervision of all boards of equalization of the county and hearing officers. This oversight and supervision shall include, but not be limited to, requiring appointment of members of county boards of equalization by the grand jury; giving the notice of the appointment of members and alternates of the county board of equalization by the county grand jury as required by Code Section 15-12-81; collecting the names of possible appointees; collecting information from possible appointees as to their qualifications; presenting the names of the possible appointees to the county grand jury; processing the appointments as required by paragraph (4) of subsection (c) of this Code section, including administering the oath of office to the newly appointed members and alternates of the county board of equalization as required by paragraph (5) of such subsection; instructing the newly appointed members and alternates as to the training they must receive and the operations of the county board of equalization; presenting to the grand jury of the county the names of possible appointees to fill vacancies as provided in paragraph (3) of such subsection; maintaining a roster of board

members and alternates, maintaining a record showing that the board members and alternates completed training, keeping attendance records of board members and alternates for the purpose of payment for service, and maintaining the uniform application forms and keeping a record of the appointment dates of board members and alternates and their terms in office; and informing the county board of equalization that it must establish by regulation procedures for conducting appeals before the board as required by paragraph (3) of this subsection. Oversight and supervision shall also include the scheduling of board hearings, assistance in scheduling hearings before hearing officers, and giving notice of the date, time, and place of hearings to the taxpayers and the county board of tax assessors and giving notice of the decisions of the county board of equalization or hearing officer to the taxpayer and county board of tax assessors as required by division (e)(6)(D)(i) of this Code section.

(B) The county governing authority shall provide any resources to the appeal administrator that are required to be provided by paragraph (7) of subsection (e) of this Code section.

(C) The county governing authority shall provide to the appeal administrator facilities and secretarial and clerical help for appeals pursuant to subsection (e.1) of this Code section.

(C.1) The operations of the appeal administrator under this Code section shall, for budgeting purposes, constitute a distinct budget unit within the county budget that is separate from the operations of the clerk of the superior court. The appeal administrator budget unit shall contain a separate line item for the compensation of the appeal administrator for the performance of duties required under this Code section as well as separate line items for resources, facilities, and personnel as specified under subparagraphs (B) and (C) of this paragraph.

(D) The appeal administrator shall maintain any county records of all notices to the taxpayer and the taxpayer's attorney, of certified receipts of returned or unclaimed mail, and from the hearings before the board of equalization and before hearing officers for 12 months after the deadline to file any appeal to the superior court expires. If an appeal is not filed to the superior court, the appeal administrator is authorized to properly destroy any records from the hearings before the county board of equalization or hearing officers but shall maintain records of all notices to the taxpayer and the taxpayer's attorney and certified receipts of returned or unclaimed mail for 12 months. If an appeal to the superior court is filed, the appeal administrator shall file such appeal and records in the civil action that is considered open by the

clerk of superior court for such appeal, and such records shall become part of the record on appeal in accordance with paragraph (2) of subsection (g) of this Code section.

(e) **Appeal.**

(1)(A) Any taxpayer or property owner as of the last date for filing an appeal may elect to file an appeal from an assessment by the county board of tax assessors to:

(i) The county board of equalization as to matters of taxability, uniformity of assessment, and value, and, for residents, as to denials of homestead exemptions pursuant to paragraph (2) of this subsection;

(ii) An arbitrator as to matters of value pursuant to subsection (f) of this Code section;

(iii) A hearing officer as to matters of value and uniformity of assessment for a parcel of nonhomestead real property with a fair market value in excess of $750,000.00 as shown on the taxpayer's annual notice of current assessment under Code Section 48-5-306, and any contiguous nonhomestead real property owned by the same taxpayer, pursuant to subsection (e.1) of this Code section; or

(iv) A hearing officer as to matters of values or uniformity of assessment of one or more account numbers of wireless property as defined in subparagraph (e.1)(1)(B) of this Code section with an aggregate fair market value in excess of $750,000.00 as shown on the taxpayer's annual notice of current assessment under Code Section 48-5-306, pursuant to subsection (e.1) of this Code section.

(A.1) The commissioner shall establish by rule and regulation a uniform appeal form that the taxpayer may use. Such uniform appeal form shall require the initial assertion of a valuation of the property by the taxpayer.

(B) In addition to the grounds enumerated in subparagraph (A) of this paragraph, any taxpayer having property that is located within a municipality, the boundaries of which municipality extend into more than one county, may also appeal from an assessment on such property by the county board of tax assessors to the county board of equalization, to a hearing officer, or to arbitration as to matters of uniformity of assessment of such property with other properties located within such municipality, and any uniformity adjustments to the assessment that may result from such appeal shall only apply for municipal ad valorem tax purposes.

(B.1) The taxpayer or his or her agent or representative may submit in support of his or her appeal an appraisal given, signed, and certified as such by a real property appraiser as classified by the Georgia Real Estate Commission and the Georgia Real Estate Appraisers Board which was performed not later than nine months prior to the date of assessment. The board of tax assessors shall consider the appraisal upon request. Within 45 days of the receipt of the taxpayer's appraisal, the board of tax assessors shall notify the taxpayer or his or her agent or representative of acceptance of the appraisal or shall notify the taxpayer or his or her agent or representative of the reasons for rejection.

(B.2) The taxpayer or his or her agent or representative may submit in support of his or her appeal the most current report of the sales ratio study for the county conducted pursuant to Code Section 48-5-274. The board of tax assessors shall consider such sales ratio study upon request of the taxpayer or his or her agent or representative.

(B.3) Any assertion of value by the taxpayer on the uniform appeal form made to the board of tax assessors shall be subject to later amendment or revision by the taxpayer by submission of written evidence to the board of tax assessors.

(B.4) If more than one property of a taxpayer is under appeal, the board of equalization, arbitrator, or hearing officer, as the case may be, shall, upon request of the taxpayer, consolidate all such appeals in one hearing and shall announce separate decisions as to each parcel or item of property. Any appeal from such a consolidated hearing to the superior court as provided in subsection (g) of this Code section shall constitute a single civil action and, unless the taxpayer specifically so indicates in the taxpayer's notice of appeal, shall apply to all such parcels or items of property.

(B.5) Within ten days of a final determination of value under this Code section and the expiration of the 30 day appeal period provided by subsection (g) of this Code section, or, as otherwise provided by law, with no further option to appeal, the county board of tax assessors shall forward such final determination of value to the tax commissioner.

(C) Appeals to the county board of equalization shall be conducted in the manner provided in paragraph (2) of this subsection. Appeals to a hearing officer shall be conducted in the manner specified in subsection (e.1) of this Code section. Appeals to an arbitrator shall be conducted in the manner specified in subsection (f) of this Code section. Such appeal proceedings shall be conducted between the hours of 8:00 A.M. and 7:00 P.M. on a business day.

Following the notification of the taxpayer of the date and time of such taxpayer's scheduled hearing, the taxpayer shall be authorized to exercise a one-time option of changing the date and time of the taxpayer's scheduled hearing to a day and time acceptable to the taxpayer and the county board of tax assessors. The appeal administrator shall grant additional extensions to the taxpayer or the county board of tax assessors for good cause shown, or by agreement of the parties.

(D) The commissioner, by regulation, shall adopt uniform procedures and standards which shall be followed by county boards of equalization, hearing officers, and arbitrators in determining appeals. Such rules shall be updated and revised periodically and reviewed no less frequently than every five years. The commissioner shall publish and update annually a manual for use by county boards of equalization, arbitrators, and hearing officers.

(2)(A) **Appeal to board of equalization.** An appeal shall be effected by e-mailing, if the county board of tax assessors has adopted a written policy consenting to electronic service, by mailing to, or by filing with the county board of tax assessors a notice of appeal within 45 days from the date of mailing the notice pursuant to Code Section 48-5-306. A written objection to an assessment of real property received by a county board of tax assessors stating the location of the real property and the identification number, if any, contained in the tax notice shall be deemed a notice of appeal by the taxpayer under the grounds listed in paragraph (1) of this subsection. A written objection to an assessment of personal property received by a county board of tax assessors giving the account number, if any, contained in the tax notice and stating that the objection is to an assessment of personal property shall be deemed a notice of appeal by the taxpayer under the grounds listed in paragraph (1) of this subsection. The county board of tax assessors shall review the valuation or denial in question, and, if any changes or corrections are made in the valuation or decision in question, the board shall send a notice of the changes or corrections to the taxpayer pursuant to Code Section 48-5-306. Such notice shall also explain the taxpayer's right to appeal to the county board of equalization as provided in subparagraph (C) of this paragraph if the taxpayer is dissatisfied with the changes or corrections made by the county board of tax assessors.

(B) If no changes or corrections are made in the valuation or decision, the county board of tax assessors shall send written notice thereof to the taxpayer, to any authorized agent or representative of the taxpayer who the taxpayer has requested that such notice be sent, and to the county board of equalization which notice shall also

constitute the taxpayer's appeal to the county board of equalization without the necessity of the taxpayer's filing any additional notice of appeal to the county board of tax assessors or to the county board of equalization. The county board of tax assessors shall also send or deliver all necessary papers to the county board of equalization. If, however, the taxpayer and the county board of tax assessors execute a signed agreement as to valuation, the appeal shall terminate as of the date of such signed agreement.

(C) If changes or corrections are made by the county board of tax assessors, the board shall notify the taxpayer in writing of such changes. The commissioner shall develop and make available to county boards of tax assessors a suitable form which shall be used in such notification to the taxpayer. The notice shall be sent by regular mail properly addressed to the address or addresses the taxpayer provided to the county board of tax assessors and to any authorized agent or representative of the taxpayer who the taxpayer has requested that such notice be sent. If the taxpayer is dissatisfied with such changes or corrections, the taxpayer shall, within 30 days of the date of mailing of the change notice, notify the county board of tax assessors to continue the taxpayer's appeal to the county board of equalization by e-mailing, if the county board of tax assessors has adopted a written policy consenting to electronic service, or by mailing to or filing with the county board of tax assessors a written notice of continuance. The county board of tax assessors shall send or deliver the notice of appeal and all necessary papers to the county board of equalization.

(D) The written notice to the taxpayer required by this paragraph shall contain a statement of the grounds for rejection of any position the taxpayer has asserted with regard to the valuation of the property. No addition to or amendment of such grounds as to such position shall be permitted before the county board of equalization.

(3)(A) In each year, the county board of tax assessors shall review the appeal and notify the taxpayer of any corrections or changes within 180 days after receipt of the taxpayer's notice of appeal. If the county board of tax assessors fails to respond to the taxpayer within such 180 day period, the property valuation asserted by the taxpayer on the property tax return or the taxpayer's notice of appeal shall become the assessed fair market value for the taxpayer's property for the tax year under appeal. If no such assertion of value was submitted by the taxpayer, the appeal shall be forwarded to the county board of equalization.

(B) In any county in which the number of appeals exceeds a number equal to or greater than 3 percent of the total number of

parcels in the county or the sum of the current assessed value of the parcels under appeal is equal to or greater than 3 percent of the gross tax digest of the county, the county board of tax assessors shall be granted an additional 180 day period to make its determination and notify the taxpayer. The county board of tax assessors shall notify each affected taxpayer of the additional 180 day review period provided in this subparagraph by mail or electronic communication, including posting notice on the website of the county board of tax assessors if such a website is available. Such additional period shall commence immediately following the last day of the 180 days provided for under subparagraph (A) of this paragraph. If the county board of tax assessors fails to review the appeal and notify the taxpayer of any corrections or changes not later than the last day of such additional 180 day period, the most recent property tax valuation asserted by the taxpayer on the property tax return or on appeal shall prevail and shall be deemed the value established on such appeal unless a time extension is granted under subparagraph (C) of this paragraph. If no such assertion of value was submitted by the taxpayer, the appeal shall be forwarded to the county board of equalization.

(C) Upon a sufficient showing of good cause by reason of unforeseen circumstances proven to the commissioner prior to the expiration of the additional 180 day period provided for under subparagraph (B) of this paragraph, the commissioner shall be authorized to provide for a time extension beyond the end of such additional 180 day period. The duration of any such time extension shall be specified in writing by the commissioner and shall also be posted on the website of the county board of tax assessors if such a website is available. If the county board of tax assessors fails to make its review and notify the taxpayer and the taxpayer's attorney not later than the last day of such time extension, the most recent property tax valuation asserted by the taxpayer on the property tax return or on the taxpayer's notice of appeal shall prevail and shall be deemed the value established on such appeal. If no such assertion of value was submitted by the taxpayer, the appeal shall be forwarded to the county board of equalization. In addition, the commissioner shall be authorized to require additional training or require such other remediation as the commissioner may deem appropriate for failure to meet the deadline imposed by the commissioner under this subparagraph.

(4) The determination by the county board of tax assessors of questions of factual characteristics of the property under appeal, as opposed to questions of value, shall be prima-facie correct in any appeal to the county board of equalization. However, the board of tax assessors shall have the burden of proving its opinions of value and

the validity of its proposed assessment by a preponderance of evidence.

(5) The county board of equalization shall determine all questions presented to it on the basis of the best information available to the board.

(6)(A) Within 15 days of the receipt of the notice of appeal, the county board of equalization shall set a date for a hearing on the questions presented and shall so notify the taxpayer and the county board of tax assessors in writing. Such notice shall be sent by first-class mail to the taxpayer and to any authorized agent or representative of the taxpayer who the taxpayer has requested that such notice be sent. Such notice shall be transmitted by e-mail to the county board of tax assessors if such board has adopted a written policy consenting to electronic service, and, if it has not, then such notice shall be sent to such board by first-class mail or intergovernmental mail. Such written notice shall advise each party that he or she may request a list of witnesses, documents, or other written evidence to be presented at the hearing by the other party, which shall be provided to the requesting party not less than seven days prior to the time of the hearing. Any failure to comply with this requirement shall be grounds for an automatic continuance or for exclusion of such witness, documents, or other written evidence. A taxpayer may appear before the board of equalization concerning any appeal in person, by his or her authorized agent or representative, or both. The taxpayer shall specify in writing to the board of equalization the name of any such agent or representative prior to any appearance by the agent or representative before the board.

(B) Within 30 days of the date of notification to the taxpayer of the hearing required in this paragraph but not earlier than 20 days from the date of such notification to the taxpayer, the county board of equalization shall hold such hearing to determine the questions presented.

(C) If more than one property of a taxpayer is under appeal, the board of equalization shall, upon request of the taxpayer, consolidate all such appeals in one hearing and announce separate decisions as to each parcel or item of property. Any appeal from such a consolidated board of equalization hearing to the superior court as provided in this subsection shall constitute a single civil action, and, unless the taxpayer specifically so indicates in his or her notice of appeal, shall apply to all such parcels or items of property.

(D)(i) The board of equalization shall announce its decision on each appeal at the conclusion of the hearing held in accordance

with subparagraph (B) of this paragraph before proceeding with another hearing. The decision of the county board of equalization shall be in writing, shall be signed by each member of the board, shall specifically decide each question presented by the appeal, shall specify the reason or reasons for each such decision as to the specific issues of taxability, uniformity of assessment, value, or denial of homestead exemptions depending upon the specific issue or issues raised by the taxpayer in the course of such taxpayer's appeal, shall state that with respect to the appeal no member of the board is disqualified from acting by virtue of subsection (j) of this Code section, and shall certify the date on which notice of the decision is given to the parties. Notice of the decision shall be delivered by hand to each party, with written receipt, or given to each party by sending a copy of the decision by registered or certified mail or statutory overnight delivery to the appellant and by filing the original copy of the decision with the county board of tax assessors. Each of the three members of the county board of equalization must be present and must participate in the deliberations on any appeal. A majority vote shall be required in any matter. All three members of the board shall sign the decision indicating their vote.

(ii) Except as otherwise provided in subparagraph (g)(4)(B) of this Code section, the county board of tax assessors shall use the valuation of the county board of equalization in compiling the tax digest for the county for the year in question and shall indicate such valuation as the previous year's value on the property tax notice of assessment of such taxpayer for the immediately following year rather than substituting the valuation which was changed by the county board of equalization.

(iii)(I) If the county's tax bills are issued before an appeal has been finally determined, the county board of tax assessors shall specify to the county tax commissioner the lesser of the valuation in the last year for which taxes were finally determined to be due on the property or 85 percent of the current year's value, unless the property in issue is homestead property and has been issued a building permit and structural improvements have occurred, or structural improvements have been made without a building permit, in which case, it shall specify 85 percent of the current year's valuation as set by the county board of tax assessors. Depending on the circumstances of the property, this amount shall be the basis for a temporary tax bill to be issued; provided, however, that a nonhomestead owner of a single property valued at $2 million or more may elect to pay the temporary tax bill which specifies 85 percent of the current year's valuation; or, such owner may

elect to pay the amount of the difference between the 85 percent tax bill based on the current year's valuation and the tax bill based on the valuation from the last year for which taxes were finally determined to be due on the property in conjunction with the amount of the tax bill based on valuation from the last year for which taxes were finally determined to be due on the property, to the tax commissioner's office. Only the amount which represents the difference between the tax bill based on the current year's valuation and the tax bill based on the valuation from the last year for which taxes were finally determined to be due will be held in an escrow account by the tax commissioner's office. Once the appeal is concluded, the escrowed funds shall be released by the tax commissioner's office to the prevailing party. The taxpayer may elect to pay the temporary tax bill in the amount of 100 percent of the current year's valuation if no substantial property improvement has occurred. The county tax commissioner shall have the authority to adjust such tax bill to reflect the 100 percent value as requested by the taxpayer. Such tax bill shall be accompanied by a notice to the taxpayer that the bill is a temporary tax bill pending the outcome of the appeal process. Such notice shall also indicate that upon resolution of the appeal, there may be additional taxes due or a refund issued.

(II) For the purposes of this Code section, any final value that causes a reduction in taxes and creates a refund that is owed to the taxpayer shall be paid by the tax commissioner to the taxpayer, entity, or transferee who paid the taxes with interest, as provided in subsection (m) of this Code section.

(III) For the purposes of this Code section, any final value that causes an increase in taxes and creates an additional billing shall be paid to the tax commissioner as any other tax due along with interest, as provided in subsection (m) of this Code section.

(7) The appeal administrator shall furnish the county board of equalization necessary facilities and administrative help. The appeal administrator shall see that the records and information of the county board of tax assessors are transmitted to the county board of equalization. The county board of equalization shall consider in the performance of its duties the information furnished by the county board of tax assessors and the taxpayer.

(8) If at any time during the appeal process to the county board of equalization and after certification by the county board of tax assessors to the county board of equalization, the county board of tax assessors and the taxpayer mutually agree in writing on the fair

market value, then the county board of tax assessors, or the county board of equalization, as the case may be, shall enter the agreed amount in all appropriate records as the fair market value of the property under appeal, and the appeal shall be concluded. The provisions in subsection (c) of Code Section 48-5-299 shall apply to the valuation unless otherwise waived by both parties.

(e.1) **Appeals to hearing officer.**

(1)(A) For any dispute involving the value or uniformity of a parcel of nonhomestead real property with a fair market value in excess of $750,000.00 as shown on the taxpayer's annual notice of current assessment under Code Section 48-5-306, at the option of the taxpayer, an appeal may be submitted to a hearing officer in accordance with this subsection. If such taxpayer owns nonhomestead real property contiguous to such qualified nonhomestead real property, at the option of the taxpayer, such contiguous property may be consolidated with the qualified property for purposes of the hearing under this subsection.

(B)(i) As used in this subparagraph, the term "wireless property" means tangible personal property or equipment used directly for the provision of wireless services by a provider of wireless services which is attached to or is located underneath a wireless cell tower or at a network data center location but which is not permanently affixed to such tower or data center so as to constitute a fixture.

(ii) For any dispute involving the values or uniformity of one or more account numbers of wireless property as defined in this subparagraph with an aggregate fair market value in excess of $750,000.00 as shown on the taxpayer's annual notice of current assessment under Code Section 48-5-306, at the option of the taxpayer, an appeal may be submitted to a hearing officer in accordance with this subsection.

(2) Individuals desiring to serve as hearing officers and who are either state certified general real property appraisers or state certified residential real property appraisers as classified by the Georgia Real Estate Commission and the Georgia Real Estate Appraisers Board for real property appeals or are designated appraisers by a nationally recognized appraiser's organization for wireless property appeals shall complete and submit an application, a list of counties the hearing officer is willing to serve, disqualification questionnaire, and resume and be approved by the Georgia Real Estate Commission and the Georgia Real Estate Appraisers Board to serve as a hearing officer. Such board shall annually publish a list of qualified and approved hearing officers for Georgia.

(3) The appeal administrator shall furnish any hearing officer so selected the necessary facilities.

(4) An appeal shall be effected by e-mailing, if the county board of tax assessors has adopted a written policy consenting to electronic service, or by filing with the county board of tax assessors a notice of appeal to a hearing officer within 45 days from the date of mailing the notice of assessment pursuant to Code Section 48-5-306. A written objection to an assessment of real property or wireless property received by a county board of tax assessors stating the taxpayer's election to appeal to a hearing officer and showing the location of the real property or wireless property contained in the assessment notice shall be deemed a notice of appeal by the taxpayer.

(5) The county board of tax assessors may for no more than 90 days review the taxpayer's written appeal, and if changes or corrections are made by the county board of tax assessors, the board shall notify the taxpayer in writing of such changes. Within 30 days of the county board of tax assessors' mailing of such notice, the taxpayer may notify the county board of tax assessors in writing that the changes or corrections made by the county board of tax assessors are not acceptable, in which case, the county board of tax assessors shall, within 30 days of the date of mailing of such taxpayer's notification, send or deliver all necessary papers to the appeal administrator and mail a copy to the taxpayer or, alternatively, forward the appeal to the board of equalization if so elected by the taxpayer and such election is included in the taxpayer's notification that the changes are not acceptable. If, after review, the county board of tax assessors determines that no changes or corrections are warranted, the county board of tax assessors shall notify the taxpayer of such decision. The taxpayer may elect to forward the appeal to the board of equalization by notifying the county board of tax assessors within 30 days of the mailing of the county board of tax assessor's notice of no changes or corrections. Upon the expiration of 30 days following the mailing of the county board of tax assessors' notice of no changes or corrections, the county board of tax assessors shall certify the notice of appeal and send or deliver all necessary papers to the appeal administrator for the appeal to the hearing officer, or board of equalization if elected by the taxpayer, and mail a copy to the taxpayer.

(6)(A) The appeal administrator shall randomly select from such list a hearing officer who shall have experience or expertise in hearing or appraising the type of property that is the subject of appeal to hear the appeal, unless the taxpayer and the county board of tax assessors mutually agree upon a hearing officer from such list. The appeal administrator shall notify the taxpayer and the taxpayer's attorney in compliance with subsection (o) of this

Code section of the name of the hearing officer and transmit a copy of the hearing officer's disqualification questionnaire and resume provided for under paragraph (2) of this subsection. The hearing officer, in conjunction with all parties to the appeal, shall set a time and place to hear evidence and testimony from both parties. The hearing shall take place in the county where the property is located, or such other place as mutually agreed to by the parties and the hearing officer. The hearing officer shall provide electronic or written notice to the parties personally or by registered or certified mail or statutory overnight delivery not less than ten days before the hearing. Such written notice shall advise each party that documents or other written evidence to be presented at the hearing by a party must be provided to the other party not less than seven days prior to the time of the hearing and that any failure to comply with this requirement shall be grounds for an automatic continuance or for exclusion of such documents or other written evidence.

(B) If the appeal administrator, after a diligent search, cannot find a qualified hearing officer who is willing to serve, the appeal administrator shall transfer the certification of the appeal to the county or regional board of equalization and notify the taxpayer and the taxpayer's attorney in compliance with subsection (o) of this Code section and the county board of tax assessors of the transmittal of such appeal.

(7) The hearing officer shall swear in all witnesses, perform the powers, duties, and authority of a county or regional board of equalization, and determine the fair market value of the real property or wireless property based upon the testimony and evidence presented during the hearing. Any issues other than fair market value and uniformity raised in the appeal shall be preserved for appeal to the superior court. The board of tax assessors shall have the burden of proving its opinion of value and the validity of its proposed assessment by a preponderance of evidence. At the conclusion of the hearing, the hearing officer shall notify both parties of the decision verbally and shall either send both parties the decision in writing or deliver the decision by hand to each party, with written receipt.

(8) The taxpayer or the board of tax assessors may appeal the decision of the hearing officer to the superior court as provided in subsection (g) of this Code section.

(9) If, at any time during the appeal under this subsection, the taxpayer and the county board of tax assessors execute a signed written agreement on the fair market value and any other issues raised: the appeal shall terminate as of the date of such signed agreement; the fair market value as set forth in such agreement shall become final; and subsection (c) of Code Section 48-5-299 shall apply.

(9.1) The provisions contained in this subsection may be waived at any time by written consent of the taxpayer and the county board of tax assessors.

(10) Each hearing officer shall be compensated by the county for time expended in considering appeals. The compensation shall be paid at a rate of not less than $75.00 per hour for the first hour and not less than $25.00 per hour for each hour thereafter as determined by the county governing authority or as may be agreed upon by the parties with the consent of the county governing authority. Compensation pursuant to this paragraph shall be paid from the county treasury upon certification by the hearing officer of the hours expended in hearing of appeals. The attendance at any training required by the commissioner shall be part of the qualifications of the hearing officer, and any nominal cost of such training shall be paid by the hearing officer.

(11) The commissioner shall promulgate rules and regulations for the proper administration of this subsection, including, but not limited to, qualifications; training, including an eight-hour course on Georgia property law, Georgia evidence law, preponderance of evidence, burden of proof, credibility of the witnesses, and weight of evidence; disqualification questionnaire; selection; removal; an annual continuing education requirement of at least four hours of instruction in recent legislation, current case law, and updates on appraisal and equalization procedures, as prepared and required by the commissioner; and any other matters necessary to the proper administration of this subsection. The failure of any hearing officer to fulfill the requirements of this paragraph shall render such officer ineligible to serve. Such rules and regulations shall also include a uniform appeal form which shall require the initial assertion of a valuation of the property by the taxpayer. Any such assertion of value shall be subject to later revision by the taxpayer based upon written evidence. The commissioner shall seek input from all interested parties prior to such promulgation.

(12) If the county's tax bills are issued before the hearing officer has rendered his or her decision on property which is on appeal, a temporary tax bill shall be issued in the same manner as otherwise required under division (e)(6)(D)(iii) of this Code section.

(13) Upon determination of the final value, the temporary tax bill shall be adjusted as required under division (e)(6)(D)(iii) of this Code section.

(f) **(For effective date, see note.) Nonbinding arbitration.**

(1) As used in this subsection, the term "certified appraisal" means an appraisal or appraisal report given, signed, and certified as such

by a real property appraiser as classified by the Georgia Real Estate Commission and the Georgia Real Estate Appraisers Board.

(2) At the option of the taxpayer, an appeal shall be submitted to nonbinding arbitration in accordance with this subsection.

(3)(A) Following an election by the taxpayer to use the arbitration provisions of this subsection, an arbitration appeal shall be effected by the taxpayer by e-mailing, if the county board of tax assessors has adopted a written policy consenting to electronic service, or by filing a written notice of arbitration appeal with the county board of tax assessors. The notice of arbitration appeal shall specifically state the grounds for arbitration. The notice shall be filed within 45 days from the date of mailing the notice pursuant to Code Section 48-5-306. Within ten days of receipt of a taxpayer's notice of arbitration appeal, the board of tax assessors shall send to the taxpayer an acknowledgment of receipt of the appeal and a notice that the taxpayer shall, within 45 days of the date of transmittal of the acknowledgment of receipt of the appeal, provide to the county board of tax assessors for consideration a copy of a certified appraisal. Failure of the taxpayer to provide such certified appraisal within such 45 days shall terminate the appeal unless the taxpayer within such 45 day period elects to have the appeal immediately forwarded to the board of equalization. Prior to appointment of the arbitrator and within 45 days of the acknowledgment of the receipt of the appeal, the taxpayer shall provide a copy of the certified appraisal as specified in this paragraph to the county board of tax assessors for consideration. Within 45 days of receiving the taxpayer's certified appraisal, the county board of tax assessors shall either accept the taxpayer's appraisal, in which case that value shall become final, or the county board of tax assessors shall reject the taxpayer's appraisal by sending within ten days of the date of such rejection a written notification by certified mail of such rejection to the taxpayer and the taxpayer's attorney of record in compliance with subsection (o) of this Code section, in which case the county board of tax assessors shall certify within 45 days the appeal to the appeal administrator of the county in which the property is located along with any other papers specified by the person seeking arbitration under this subsection, including, but not limited to, the staff information from the file used by the county board of tax assessors. In the event the taxpayer is not notified of a rejection of the taxpayer's appraisal within such ten-day period, the taxpayer's appraisal value shall become final. In the event that the county board of tax assessors neither accepts nor rejects the value set out in the certified appraisal within 45 days after the receipt of the certified appraisal, then the certified appraisal shall become the final value. All papers and information

certified to the appeal administrator shall become a part of the record on arbitration. At the time of certification of the appeal, the county board of tax assessors shall serve the taxpayer and the taxpayer's attorney of record in compliance with subsection (o) of this Code section, if any, or employee with a copy of the certification along with any other papers specified by the person seeking arbitration along with the civil action file number assigned to the appeal, if any. Within 15 days of filing the certification to the appeal administrator, the presiding or chief judge of the superior court of the circuit in which the property is located shall issue an order authorizing the arbitration.

(B) At any point, the county board of tax assessors and the taxpayer may execute a signed, written agreement establishing the fair market value without entering into or completing the arbitration process. The fair market value as set forth in such agreement shall become the final value.

(C) The arbitration shall be conducted pursuant to the following procedure:

(i) The county board of tax assessors shall, at the time the appeal is certified to the appeal administrator under subparagraph (A) of this paragraph, provide to the taxpayer a notice of a meeting time and place to decide upon an arbitrator, to occur within 60 days after the date of sending the rejection of the taxpayer's certified appraisal. Following the notification of the taxpayer of the date and time of the meeting, the taxpayer shall be authorized to exercise a one-time option of changing the date and time of the meeting to a date and time acceptable to the taxpayer and the county board of tax assessors. If the parties agree, the matter shall be submitted to a single arbitrator chosen by the parties. If the parties cannot agree on the single arbitrator, the arbitrator may be chosen by the presiding or chief judge of the superior court of the circuit in which the property is located within 30 days after the filing of a petition by either party;

(ii) In order to be qualified to serve as an arbitrator, a person shall be classified as a state certified general real property appraiser or state certified residential real property appraiser pursuant to the rules and regulations of the Georgia Real Estate Commission and the Georgia Real Estate Appraisers Board and shall have experience or expertise in appraising the type of property that is the subject of the arbitration;

(iii) The arbitrator, within 30 days after his or her appointment, shall set a time and place to hear evidence and testimony from both parties. The arbitrator shall provide written notice to

the parties personally or by registered or certified mail or statutory overnight delivery not less than ten days before the hearing. Such written notice shall advise each party that documents or other written evidence to be presented at the hearing by a party must be provided to the other party not less than seven days prior to the time of the hearing and that any failure to comply with this requirement, unless waived by mutual written agreement of such parties, shall be grounds for a continuance or for exclusion of such documents or other written evidence. The arbitrator, in consultation with the parties, may adjourn or postpone the hearing. Following notification of the taxpayer of the date and time of the hearing, the taxpayer shall be authorized to exercise a one-time option of changing the date and time of the hearing to a date and time acceptable to the taxpayer and the county board of tax assessors. The presiding or chief judge of the superior court of the circuit in which the property is located may direct the arbitrator to proceed promptly with the hearing and the determination of the appeal upon application of any party. The hearing shall occur in the county in which the property is located or such other place as may be agreed upon in writing by the parties;

(iv) At the hearing, the parties shall be entitled to be heard, to present documents, testimony, and other matters, and to cross-examine witnesses. The arbitrator may hear and determine the controversy upon the documents, testimony, and other matters produced notwithstanding the failure of a party duly notified to appear;

(v) The arbitrator shall maintain a record of all pleadings, documents, testimony, and other matters introduced at the hearing. The arbitrator or any party to the proceeding may have the proceedings transcribed by a court reporter;

(vi) The provisions of this paragraph may be waived at any time by written consent of the taxpayer and the board of tax assessors;

(vii) At the conclusion of the hearing, the arbitrator shall render a decision regarding the fair market value of the property subject to nonbinding arbitration;

(viii) In order to determine the fair market value, the arbitrator may consider the final value for the property submitted by the county board of tax assessors at the hearing and the final value submitted by the taxpayer at the hearing. The taxpayer shall be responsible for the cost of any appraisal by the taxpayer's appraiser;

(ix) The arbitrator shall consider the final value submitted by the county board of tax assessors, the final value submitted by the taxpayer, and evidence supporting the values submitted by the county board of tax assessors and the taxpayer. The arbitrator shall determine the fair market value of the property under appeal. The arbitrator shall notify both parties of the decision verbally and shall either send both parties the decision in writing or deliver the decision by hand to each party, with written receipt;

(x) If the taxpayer's value is closest to the fair market value determined by the arbitrator, the county shall be responsible for the fees and costs of such arbitrator. If the value of the board of tax assessors is closest to the fair market value determined by the arbitrator, the taxpayer shall be responsible for the fees and costs of such arbitrator; and

(xi) The board of tax assessors shall have the burden of proving its opinion of value and the validity of its proposed assessment by a preponderance of evidence.

(4) If the county's tax bills are issued before an arbitrator has rendered his or her decision on property which is on appeal, a temporary tax bill shall be issued in the same manner as otherwise required under division (e)(6)(D)(iii) of this Code section.

(5) Upon determination of the final value, the temporary tax bill shall be adjusted as required under division (e)(6)(D)(iii) of this Code section.

(g) **(For effective date, see note.) Appeals to the superior court.**

(1) The taxpayer or the county board of tax assessors may appeal decisions of the county board of equalization, hearing officer, or arbitrator, as applicable, to the superior court of the county in which the property lies. By mutual written agreement, the taxpayer and the county board of tax assessors may waive an appeal to the county board of equalization and initiate an appeal under this subsection. A county board of tax assessors shall not appeal a decision of the county board of equalization, arbitrator, or hearing officer, as applicable, changing an assessment by 20 percent or less unless the board of tax assessors gives the county governing authority a written notice of its intention to appeal, and, within ten days of receipt of the notice, the county governing authority by majority vote does not prohibit the appeal. In the case of a joint city-county board of tax assessors, such notice shall be given to the city and county governing authorities, either of which may prohibit the appeal by majority vote within the allowed period of time.

(2) An appeal by the taxpayer as provided in paragraph (1) of this subsection shall be effected by e-mailing, if the county board of tax assessors has adopted a written policy consenting to electronic service, or by mailing to or filing with the county board of tax assessors a written notice of appeal. An appeal by the county board of tax assessors shall be effected by giving notice to the taxpayer. The notice to the taxpayer shall be dated and shall contain the name and the last known address of the taxpayer. The notice of appeal shall specifically state the grounds for appeal. The notice shall be mailed or filed within 30 days from the date on which the decision of the county board of equalization, hearing officer, or arbitrator is delivered pursuant to subparagraph (e)(6)(D), paragraph (7) of subsection (e.1), or division (f)(3)(C)(ix) of this Code section. Within 45 days of receipt of a taxpayer's notice of appeal and before certification of the appeal to the superior court, the county board of tax assessors shall send to the taxpayer notice that a settlement conference, in which the county board of tax assessors and the taxpayer shall confer in good faith, will be held at a specified date and time which shall be no later than 30 days from the notice of the settlement conference, and notice of the amount of the filing fee, if any, required by the clerk of the superior court. The taxpayer may exercise a one-time option to reschedule the settlement conference to a different date and time acceptable to the taxpayer, but in no event later than 30 days from the date of the notice. If at the end of the 45 day review period the county board of tax assessors elects not to hold a settlement conference, then the appeal shall terminate and the taxpayer's stated value shall be entered in the records of the board of tax assessors as the fair market value for the year under appeal and the provisions of subsection (c) of Code Section 48-5-299 shall apply to such value. If the taxpayer chooses not to participate in the settlement conference, he or she may not seek and shall not be awarded fees and costs at such time when the appeal is settled in superior court. If at the conclusion of the settlement conference the parties reach an agreement, the settlement value shall be entered in the records of the county board of tax assessors as the fair market value for the tax year under appeal and the provisions of subsection (c) of Code Section 48-5-299 shall apply to such value. If at the conclusion of the settlement conference the parties cannot agree on a fair market value, then written notice shall be provided to the taxpayer that the filing fees must be paid by the taxpayer to the clerk of the superior court within ten days of the date of the conference, with a copy of the check delivered to the county board of tax assessors. Notwithstanding any other provision of law to the contrary, the amount of the filing fee for an appeal under this subsection shall be $25.00. An appeal under this subsection shall not be subject to any other fees or additional costs otherwise required under any provision of Title 15 or under any other provision of law.

Immediately following payment of such $25.00 filing fee by the taxpayer to the clerk of the superior court, the clerk shall remit the proceeds thereof to the governing authority of the county which shall deposit the proceeds into the general fund of the county. Within 30 days of receipt of proof of payment to the clerk of the superior court, the county board of tax assessors shall certify to the clerk of the superior court the notice of appeal and any other papers specified by the person appealing including, but not limited to, the staff information from the file used by the county board of tax assessors, the county board of equalization, the hearing officer, or the arbitrator. All papers and information certified to the clerk shall become a part of the record on appeal to the superior court. At the time of certification of the appeal, the county board of tax assessors shall serve the taxpayer and his or her attorney of record, if any, with a copy of the notice of appeal and with the civil action file number assigned to the appeal. Such service shall be effected in accordance with subsection (b) of Code Section 9-11-5. No discovery, motions, or other pleadings may be filed by the county board of tax assessors in the appeal until such service has been made.

(3) The appeal shall constitute a de novo action. The board of tax assessors shall have the burden of proving its opinions of value and the validity of its proposed assessment by a preponderance of evidence. Upon a failure of the board of tax assessors to meet such burden of proof, the court may, upon motion or sua sponte, authorize the finding that the value asserted by the board of tax assessors is unreasonable and authorize the determination of the final value of the property.

(4)(A) The appeal shall be placed on the court's next available jury or bench trial calendar, at the taxpayer's election, following the filing of the appeal unless continued by the court. If only questions of law are presented in the appeal, the appeal shall be heard as soon as practicable before the court sitting without a jury. Each hearing before the court sitting without a jury at the taxpayer's election shall be held within 30 days following the date on which the appeal is filed with the clerk of the superior court.

(B)(i) The county board of tax assessors shall use the valuation of the county board of equalization, the hearing officer, or the arbitrator, as applicable, in compiling the tax digest for the county.

(ii)(I) If the final determination of value on appeal is less than the valuation thus used, the tax commissioner shall be authorized to adjust the taxpayer's tax bill to reflect the final value for the year in question.

(II) If the final determination of value on appeal causes a reduction in taxes and creates a refund that is owed to the

taxpayer, it shall be paid by the tax commissioner to the taxpayer, entity, or transferee who paid the taxes with interest, as provided in subsection (m) of this Code section.

(III) If the final determination of value on appeal is 85 percent or less of the valuation set by the county board of equalization, hearing officer, or arbitrator as to any real property, the taxpayer, in addition to the interest provided for in subsection (m) of this Code section, shall recover costs of litigation and reasonable attorney's fees incurred in the action. Any appeal of an award of attorney's fees by the county shall be specifically approved by the governing authority of the county.

(iii) If the final determination of value on appeal is greater than the valuation set by the county board of equalization, hearing officer, or arbitrator, as applicable, causes an increase in taxes, and creates an additional billing, it shall be paid to the tax commissioner as any other tax due along with interest, as provided in subsection (m) of this Code section.

(g.1) (For effective date, see note.) The provisions in subsection (c) of Code Section 48-5-299 shall apply to the valuation, unless otherwise waived in writing by both parties, as to:

(1) The valuation established or announced by any county board of equalization, arbitrator, hearing officer, or superior court; and

(2) Any written agreement or settlement of valuation reached by the county board of tax assessors and the taxpayer as permitted by this Code section.

(h) **Recording of interviews or hearings.**

(1) In the course of any assessment, appeal, or arbitration, or any related proceeding, the taxpayer shall be entitled to:

(A) Have an interview with an officer or employee, that is authorized to discuss tax assessments of the board of tax assessors relating to the valuation of the taxpayer's property subject to such assessment, appeal, arbitration, or related proceeding, and the taxpayer may record the interview at the taxpayer's expense and with equipment provided by the taxpayer, and no such officer or employee of the board of tax assessors may refuse to participate in an interview relating to such valuation for reason of the taxpayer's choice to record such interview; and

(B) Record, at the taxpayer's expense and with equipment provided by the taxpayer, all proceedings before the board of equalization or any hearing officer.

(2) The interview referenced in subparagraph (A) of paragraph (1) of this subsection shall be granted to the taxpayer within 30 calendar

days from the postmark date of the taxpayer's written request for the interview, and the interview shall be conducted in the office of the board of assessors. The time and date for the interview, within such 30 calendar day period, shall be mutually agreed upon between the taxpayer and the taxing authority. The taxing authority may extend the time period for the interview an additional 30 days upon written notification to the taxpayer.

(3) The superior courts of this state shall have jurisdiction to enforce the provisions of this subsection directly and without the issue being first brought to any administrative procedure or hearing. The taxpayer shall be awarded damages in the amount of $100.00 per occurrence where the taxpayer requested the interview, in compliance with this subsection, and the board of assessors failed to timely comply; and, the taxpayer shall be entitled to recover reasonable attorney's fees and expenses of litigation incurred in any action brought to compel such interview.

(i) **Alternate members of boards of equalization.**

(1) Alternate members of the county board of equalization in the order in which selected shall serve:

(A) As members of the county board of equalization in the event there is a permanent vacancy on the board created by the death, ineligibility, removal from the county, or incapacitating illness of a member or by any other circumstances. An alternate member who fills a permanent vacancy shall be considered a member of the board for the remainder of the unexpired term; or

(B) In any appeal for which an alternate member is selected for service by the appeal administrator.

(2) A hearing panel shall consist of no more than three members at any time, one of whom shall serve as the presiding member for the purpose of the hearing.

(j) **Disqualification.**

(1) No member of the county board of equalization and no hearing officer shall serve with respect to any appeal concerning which he or she would be subject to a challenge for cause if he or she were a member of a panel of jurors in a civil case involving the same subject matter.

(2) The parties to an appeal to the county board of equalization or to a hearing officer shall file in writing with the appeal, in the case of the person appealing, or, in the case of the county board of tax assessors, with the certificate transmitting the appeal, questions relating to the disqualification of members of the county board of

equalization or hearing officer. Each question shall be phrased so that it can be answered by an affirmative or negative response. The members of the county board of equalization or hearing officer shall, in writing under oath within two days of their receipt of the appeal, answer the questions and any question which may be adopted pursuant to subparagraph (e)(1)(D) of this Code section. Answers of the county board of equalization or hearing officers shall be part of the decision of the board or hearing officer and shall be served on each party by first-class mail. Determination of disqualification shall be made by the judge of the superior court upon the request of any party when the request is made within two days of the response of the board or hearing officer to the questions. The time prescribed under subparagraph (e)(6)(A) of this Code section shall be tolled pending the determination by the judge of the superior court.

(k) **Compensation of board of equalization members.**

(1) Each member of the county board of equalization shall be compensated by the county per diem for time expended in considering appeals. The compensation shall be paid at a rate of not less than $25.00 per day and shall be determined by the county governing authority. The attendance at required approved appraisal courses shall be part of the official duties of a member of the board, and he or she shall be paid for each day in attendance at such courses and shall be allowed reasonable expenses necessarily incurred in connection with such courses. Compensation pursuant to this paragraph shall be paid from the county treasury upon certification by the member of the days expended in consideration of appeals or attending approved appraisal courses.

(2) Each member of the county board of equalization who participates in online training provided by the department shall be compensated by the county at the rate of $25.00 per day for each eight hours of completed training. A member shall certify under oath and file an affidavit with the appeal administrator stating the number of hours required to complete such training and the number of hours which were actually completed. The appeal administrator shall review the affidavit and, following approval thereof, shall notify the county governing authority. The Council of Superior Court Clerks of Georgia shall develop and make available an appropriate form for such purpose. Compensation pursuant to this paragraph shall be paid from the county treasury following approval of the appeal administrator of the affidavit filed under this paragraph.

(l) **Military service.**

In the event of the absence of an individual from such individual's residence because of duty in the armed forces, the filing requirements

set forth in paragraph (3) of subsection (f) of this Code section shall be tolled for a period of 90 days. During this period, any member of the immediate family of the individual, or a friend of the individual, may notify the tax receiver or the tax commissioner of the individual's absence due to military service and submit written notice of representation for the limited purpose of the appeal. Upon receipt of this notice, the tax receiver or the tax commissioner shall initiate the appeal.

(m) **Interest.**

(1) For the purposes of this Code section, any final value that causes a reduction in taxes and creates a refund that is owed to the taxpayer shall be paid by the tax commissioner to the taxpayer, entity, or transferee who paid the taxes within 60 days from the date of the final determination of value. Such refund shall include interest at the same rate specified in Code Section 48-2-35 which shall accrue from the due date of the taxable year in question or the date paid, whichever is later, through the date on which the final determination of value was made. In no event shall the amount of such interest exceed $150.00 for homestead property or $5,000.00 for nonhomestead property. Any refund paid after the sixtieth day shall accrue interest from the sixty-first day until paid with interest at the same rate specified in Code Section 48-2-35. The interest accrued after the sixtieth day and forward shall not be subject to the limits imposed by this subsection. The tax commissioner shall pay the tax refund and any interest for the refund from current collections in the same proportion for each of the levying authorities for whom the taxes were collected.

(2) For the purposes of this Code section, any final value that causes an increase in taxes and creates an additional billing shall be paid to the tax commissioner as any other tax due. After the tax bill notice has been mailed out, the taxpayer shall be afforded 60 days from the date of the postmark to make full payment of the adjusted bill. Once the 60 day payment period has expired, the bill shall be considered past due and interest shall accrue from the original billing due date as specified in Code Section 48-2-40 without limit until the bill is paid in full. Once past due, all other fees, penalties, and late and collection notices shall apply as prescribed in this chapter for the collection of delinquent taxes.

(n) **Service of notice.**

A notice of appeal to a board of tax assessors under subsection (e), (e.1), (f), or (g) of this Code section shall be deemed filed as of the date of the United States Postal Service postmark, receipt of delivery by statutory overnight delivery, or, if the board of tax assessors has adopted a written policy consenting to electronic service, by transmit-

ting a copy to the board of tax assessors via e-mail in portable document format using all e-mail addresses provided by the board of tax assessors. Service by mail, statutory overnight delivery, or electronic transmittal is complete upon such service. Proof of service may be made within 45 days of receipt of the annual notice of current assessment under Code Section 48-5-306 to the taxpayer by certificate of the taxpayer, the taxpayer's attorney, or the taxpayer's employee by written admission or by affidavit. Failure to make proof of service shall not affect the validity of service.

(o) When a taxpayer authorizes an agent, representative, or attorney in writing to act on the taxpayer's behalf, and a copy of such written authorization is provided to the county board of tax assessors, all notices required to be provided to the taxpayer under this Code section, including those regarding hearing times, dates, certifications, notice of changes or corrections, or other official actions, shall be provided to the taxpayer and the authorized agent, representative, or attorney. Upon agreement by the county board of tax assessors and the taxpayer's agent, representative, or attorney, notices required by this Code section to be sent to the taxpayer or the taxpayer's agent, representative, or attorney may be sent by e-mail. The failure to comply with this subsection with respect to a notice required under this Code section shall result in the tolling of any deadline imposed on the taxpayer under this Code section with respect to that notice. (Ga. L. 1913, p. 123, § 6; Ga. L. 1918, p. 230, § 1; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-6912; Ga. L. 1958, p. 387, § 1; Ga. L. 1972, p. 1094, §§ 1-9; Ga. L. 1973, p. 709, § 1; Ga. L. 1974, p. 609, §§ 2-4; Ga. L. 1975, p. 1090, §§ 1, 2; Ga. L. 1976, p. 276, § 1; Ga. L. 1976, p. 366, § 1; Ga. L. 1976, p. 1744, § 1; Ga. L. 1977, p. 588, § 1; Ga. L. 1977, p. 903, § 1; Ga. L. 1977, p. 1009, § 1; Code 1933, § 91A-1449, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 519, § 2; Ga. L. 1980, p. 1722, § 1; Ga. L. 1981, p. 1554, § 5; Ga. L. 1983, p. 576, § 2; Ga. L. 1983, p. 1158, § 1; Ga. L. 1984, p. 22, § 48; Ga. L. 1984, p. 352, § 3; Ga. L. 1986, p. 419, § 1; Ga. L. 1988, p. 220, §§ 1, 2; Ga. L. 1988, p. 487, §§ 1, 2; Ga. L. 1990, p. 1122, § 4; Ga. L. 1990, p. 1361, § 1; Ga. L. 1991, p. 664, § 1; Ga. L. 1991, p. 1110, § 2; Ga. L. 1992, p. 1678, § 1; Ga. L. 1992, p. 2352, § 1; Ga. L. 1993, p. 435, §§ 1, 2; Ga. L. 1993, p. 1777, § 3; Ga. L. 1994, p. 318, §§ 1, 2; Ga. L. 1994, p. 787, §§ 1, 2; Ga. L. 1994, p. 1051, § 1; Ga. L. 1994, p. 1088, § 1; Ga. L. 1994, p. 1823, § 2; Ga. L. 1995, p. 10, § 48; Ga. L. 1999, p. 1043, § 3; Ga. L. 2000, p. 136, § 48; Ga. L. 2000, p. 873, §§ 2, 3; Ga. L. 2000, p. 1589, § 3; Ga. L. 2001, p. 495, § 1; Ga. L. 2004, p. 455, § 3; Ga. L. 2006, p. 769, § 1/SB 597; Ga. L. 2008, p. 1149, §§ 4, 5, 6/HB 1081; Ga. L. 2009, p. 216, §§ 1, 2/SB 240; Ga. L. 2010, p. 1104, §§ 2-1, 4-3, 6-1/SB 346; Ga. L. 2013, p. 655, § 5/HB 197; Ga. L. 2014, p. 672, § 4/HB 755; Ga. L. 2015, p. 1219, §§ 15, 16/HB 202.)

Delayed effective date. — Subsections (f), (g), and (g.1) as set out above, become effective January 1, 2016. For versions of subsections (f), (g), and (g.1) in effect until January 1, 2016, see the 2015 amendment note.

The 2013 amendment, effective July 1, 2013, rewrote division (e)(6)(D)(iii).

The 2014 amendment, effective July 1, 2014, rewrote division (e)(6)(D)(iii); and substituted the present provisions of subsection (m) for the former provisions, which read: "Refunds. In the event a refund is owed to the taxpayer, such refund shall be paid to the taxpayer within 60 days of the last date upon which an appeal may be filed, or the date the final determination of value is established on appeal, whichever is later. Any refund paid after the sixtieth day shall accrue interest from the sixtieth day until paid with interest at the same rate as specified in Code Section 48-2-35."

The 2015 amendment added subsections (a) and (a.1); redesignated former subsection (a) as subsection (a.2); in subsection (a.2), added "of boards of equalization." to the subsection catchline, substituted "this state" for "the state" near the beginning of paragraph (1), added paragraph (1.1), substituted "The members of each board of equalization" for "The grand jury of any such county" at the beginning of the third sentence of paragraph (2), substituted "The appeal administrator shall have administrative authority in all matters governing the conduct and business of the boards of equalization so as to provide oversight and supervision of such boards and scheduling of appeals" for "The chairperson and vice chairpersons shall be vested with full administrative authority in calling and conducting the business of the board" in the middle of paragraph (2), and, in paragraph (4), substituted "counties, shall specify which appeal administrator" for "counties and shall specify which clerk of the superior court" and added ", and shall provide for funding from each participating county for the operations of the appeal administrator as required by subparagraph (d)(4)(C.1) of this Code section"; rewrote subsection (b); in subsection (c), added "of board of equalization members." to the subsection catchline, substituted "cause such appointees to appear before the clerk of the superior court for the purpose of taking and executing in writing the oath of office. The clerk of the superior court may utilize any means necessary for such purpose, including, but not limited to, telephonic or other communication, regular first-class mail, or issuance of and delivery" for "issue and deliver" in paragraph (4) and, in paragraph (5), inserted "presiding or" and substituted "the appeal administrator" for "his or her designee" in the last sentence; in subsection (d), added "of board of equalization members" to the subsection catchline, added commas to the introductory phrase of the first sentence of paragraph (2), substituted "(e)(1)(D)" for "(e)(5)(B)" in paragraph (3), and rewrote paragraph (4); rewrote subsections (e) and (e.1); repealed former subsections (f) and (g) and reenacted the present provisions of subsections (f) and (g) in their place; added subsection (g.1); rewrote subsections (h) and (i); in subsection (k), added "of board of equalization members" to the subsection catchline, designated the previously existing provisions as paragraph (1), added paragraph (2), and, in paragraph (1), substituted "paragraph" for "subsection" and added "or attending approved appraisal courses" in the last sentence; in subsection (m), substituted "reduction" for "deduction" near the beginning of the first sentence, in the second sentence, deleted "on the amount of the deduction" following "include interest" near the beginning, substituted "the due date" for "November 15" near the middle, deleted "the final installment was due or was" following "or the date" near the middle, and substituted "the final determination of value was made" for "the refund is paid or 60 days from the date of the final determination, whichever is earlier", and rewrote paragraph (2); in subsection (n), deleted "and showing in the subject line of the email message the words 'STATUTORY ELECTRONIC SERVICE' in capital letters" at the end of the first sentence, and substituted "annual notice of current assessment under Code Section 48-5-306" for "notice of current assessment" in the second sentence; and rewrote subsection (o). See delayed effec-

tive date note for effective dates of subsections (f), (g), and (g.1) and the editor's note for effective dates and applicability of the remaining 2015 amendments.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2015, "separate line items" was substituted for "separate lines items" near the end of subparagraph (d)(4)(C.1).

Editor's notes. — Ga. L. 2015, p. 1219, § 27/HB 202, not codified by the General Assembly, provides, in part, that Sections 13 and 15 of this Act shall become effective on July 1, 2015, and that Sections 9, 12, and 15 of this Act shall be applicable to all appeals filed on or after January 1, 2016. Ga. L. 2015, p. 1219, § 15/HB 202, purported, in part, to amend subsections (a) through (e) but actually amended subsections (a) through (e.1).

Law reviews. — For article, "Administrative Law," see 63 Mercer L. Rev. 47 (2011).

JUDICIAL DECISIONS

Analysis

General Consideration

Valuation of property may be changed in subsequent years even if not further improved.

Fee awards afforded to the taxpayer the additional relief to which the taxpayer was statutorily entitled under O.C.G.A. §§ 9-11-54(c)(1) and 48-5-311(g)(4)(B)(ii). Fulton County Bd. of Tax Assessors v. Toro Props. VI, LLC, 329 Ga. App. 26, 763 S.E.2d 496 (2014).

No time limitation in fee award. — Rendering the fee awards after the expiration of the term of the court of the valuation orders did not frustrate judicial economy or violate Georgia's public policy as O.C.G.A. § 48-5-311(g)(4)(B)(ii) contained no time limitation dictating when a taxpayer must move or a court must award litigation costs and attorney fees. Fulton County Bd. of Tax Assessors v. Toro Props. VI, LLC, 329 Ga. App. 26, 763 S.E.2d 496 (2014).

Time within which to accept or reject taxpayer's appraisal. — Because O.C.G.A. § 48-5-311(f)(3)(A) specifies the effect of the failure of the board of assessors to accept or reject the taxpayer's appraisal within 45 days, that language must be enforced. Fulton County Bd. of Tax Assessors v. Fast Evictions, LLC, 314 Ga. App. 178, 723 S.E.2d 461 (2012).

Board of tax assessors failed to timely reject taxpayer's appraisals. — Trial court did not err by deciding that a county board of tax assessors failed to timely reject a taxpayer's certified appraisals of the taxpayer's real property pursuant to O.C.G.A. § 48-5-311(f)(3)(A) because the board completely failed to show when the board made the board's decision to reject the appraisals; the board notified the taxpayer that the board rejected the taxpayer's appraisal and adopted a different recommended value 53 days after the taxpayer submitted the appraisal, but there was no indication in the record of when the board made the board's decision. Fulton County Bd. of Tax Assessors v. Fast Evictions, LLC, 314 Ga. App. 178, 723 S.E.2d 461 (2012).

Board of assessors failed to prove that prior year sale was not bona fide. — Board of Assessors failed to prove its contention that a 2011 sale of taxable property by Freddie Mac did not qualify as an arm's length, bona fide sale for purposes of limiting the assessment value of the property in the next year under O.C.G.A. § 48-5-2(3). CPF Invs., LLLP v. Fulton County Bd. of Assessors, 330 Ga. App. 744, 769 S.E.2d 159 (2015).

Cited in In re Powell-Garvey Co., 2006 Bankr. LEXIS 5095 (Bankr. S.D. Ga. June 13, 2006).

Appeals

1. In General

Scope of superior court's jurisdiction on appeal. — Trial court properly ruled that the moratorium in O.C.G.A. § 48-5B-1 applied to the subject property in the de novo appeal of the value determination and was not a waived issue because the board of tax assessors, the arbitrator, and the board of equalization had all made determinations as to value and the applicability of the moratorium, thus, it was properly before the trial court. SPH Glynn, LLC v. Glynn County Bd. of Tax Assessors, 326 Ga. App. 196, 756 S.E.2d 282 (2014).

Costs and expenses on appeal.

Final property valuation that was set by operation of law pursuant to O.C.G.A. § 48-5-299(c) based on a prior tax year appeal did not preclude an award of attorney's fees and costs under O.C.G.A. § 48-5-311(g)(4)(B)(ii). Fulton County Bd. of Tax Assessors v. LM Atlanta Airport, LLC, 313 Ga. App. 439, 721 S.E.2d 640 (2011).

In a tax appeal, the trial court erred by denying the taxpayer's request for attorney fees under O.C.G.A. § 48-5-311 (g)(4)(B)(ii) because it was successful against the county board of tax assessors and the capped value met the statutory threshold mandating that the taxpayer shall recover costs of litigation and reasonable attorney's fees incurred in the action. SPH Glynn, LLC v. Glynn County Bd. of Tax Assessors, 326 Ga. App. 196, 756 S.E.2d 282 (2014).

Value to be determined by arbitrator. — In a taxpayer's appeal from a real estate tax valuation assessment, the trial court erred in holding that the value of a parcel of real property was the value set out in the taxpayer's appraisal since within 45 days of receiving the taxpayer's certified appraisal, the county board of tax assessors voted to reject the taxpayer's appraisal value, and within another 45 days, the board certified the appeal in compliance with O.C.G.A. § 48-5-311 (f)(3)(A). Thus, the value remained to be determined by an arbitrator in accordance with the procedures set out in § 48-5-311(f). Fulton County Bd. of Tax Assessors v. Greenfield Inv. Group, LLC, 313 Ga. App. 195, 721 S.E.2d 128 (2011).

4. Appeals to Superior Court

Having failed to appeal from the decision of the board of equalization, etc.

Failure of limited liability companies (LLC) to satisfy the requirement of O.C.G.A. § 48-5-311(e)(2)(A) barred any further right to appeal because the letters and returns the LLCs' representative submitted months before the assessment notices were mailed did not excuse the LLCs from complying with the requirement of O.C.G.A. § 48-5-311(e)(2)(A) that a taxpayer mail or file a notice of appeal within 30 days from the date of mailing the notice pursuant to O.C.G.A. § 48-5-306; because the LLCs failed to comply with O.C.G.A. § 48-5-311(e) so as to effectuate an appeal to the county board of equalization, the LLCs' appeals to the superior court should have been dismissed. Hall County Bd. of Tax Assessors v. Avalon Hills Partners, LLC, 307 Ga. App. 520, 705 S.E.2d 674 (2010).

Trial court properly dismissed a taxpayer group's suit seeking a rollback of 2009 assessed values to the 2008 assessed values because whether the moratorium under O.C.G.A. § 48-5B-1 applied should have been raised in an administrative appeal under O.C.G.A. § 48-5-311 and, by failing to pursue the taxpayers' remedy, the taxpayers' complaint was subject to dismissal. We, the Taxpayers v. Bd. of Tax Assessors, 292 Ga. 31, 734 S.E.2d 373 (2012).

Scope of superior court's jurisdiction on appeal.

Reviewing court lacked subject matter jurisdiction to consider value and uniformity in an appeal of a decision of the Hall County Board of Equalization (BOE) as a hospital did not present those issues in the underlying administrative tax case, which was limited to O.C.G.A. § 48-5-41(a)(5), and the statute's application; further, as there was no Hall County Board of Tax Assessors decision concerning value and uniformity that could have been appealed to the BOE, there was no appeal to the BOE on those issues that could have been waived by mutual agree-

ment and initiated, instead, in the reviewing court under O.C.G.A. § 48-5-311(g)(1). Hall County Bd. of Tax Assessors v. Northeast Ga. Health Sys., 317 Ga. App. 389, 730 S.E.2d 715 (2012).

Mandamus relief properly denied since certification of appeals obtained. — Trial court did not err by denying a group of property owners their request for mandamus relief in the nature of finding that the county board of tax assessors certified their property tax appeals because it was undisputed that the tax appeals were physically delivered to the trial court and that it had ruled that such appeals were certified to it, thus, the property owners received the relief sought regarding certification. Newton Timber Co., L.L.L.P. v. Monroe County Bd. of Tax Assessors, 755 S.E.2d 770 (2014).

Assessment of property taxes. — Judgment setting the value for improved residential real property owned by the property owners at $ 291,000 was appropriate because an appraiser gave expert opinion testimony that the fair market value of the property was $291,000 and other expert witnesses opined that the county employed appraisal methods in ways that systemically produced incorrect or arbitrary estimates of fair market value for residential properties. Gilmer County Bd. of Tax Assessors v. McHugh, 309 Ga. App. 145, 709 S.E.2d 311 (2011).

Property owners' challenges to tax assessment in superior court. — There was no merit in the Gilmer County Board of Tax Assessor's claim that the superior court erred in allowing the property owners to challenge the uniformity of the tax assessment. The property owners did not base the owners' uniformity challenge solely upon the amount of taxes paid by the specific developer who owned property within the owners' subdivision; the owners also based the owners' challenge upon the amount of taxes paid by numerous other taxpayers in the county to whose properties the property owners contended an absorption rate had been misapplied. Gilmer County Bd. of Tax Assessors v. McHugh, 309 Ga. App. 145, 709 S.E.2d 311 (2011).

Attorney fee awards.

Tax assessor waived the assessor's argument that the company was not entitled to attorney fees under O.C.G.A. § 48-5-311(g)(4)(B)(ii) on the grounds that the bank failed to file a property tax return or that the bank was the real party in interest. Fulton County Bd. of Assessors v. Calliope Props., LLC, 312 Ga. App. 875, 720 S.E.2d 312 (2011).

Award of attorney fees approved on appeal. — Because the value was less than 85 percent of the valuation set by the board of assessors, the trial court awarded the owner attorney fees under O.C.G.A. § 48-5-311(g)(4)(B)(ii). The amount of the fee award was within the range of the evidence adduced at the hearing, and the award was not manifestly unreasonable on its face. Fulton County Bd. of Assessors v. Calliope Props., LLC, 315 Ga. App. 405, 727 S.E.2d 198 (2012).

Remand held proper. — In a gas company's suit against the state revenue commissioner for mandamus compelling the commissioner to accept its property tax returns under O.C.G.A. §§ 48-1-2(21) and 48-5-511(a), remand was proper to determine if the company had an acceptable alternative remedy in its pending county tax appeals under O.C.G.A. § 48-5-311, if the commissioner could be made a party to those appeals by joinder or some other procedure. Southern LNG, Inc. v. MacGinnitie, 294 Ga. 657, 755 S.E.2d 683 (2014).

ARTICLE 5A

EXAMINATION OF COUNTY TAX DIGESTS

48-5-345. (For effective date, see note.) Receipt for digest and order authorizing use; assessment if deviation from proper assessment ratio.

(a)(1) (For effective date, see note.) Upon the determination by the commissioner that a county tax digest is in proper form, that the property therein that is under appeal is within the limits of Code Section 48-5-304, and that the digest is accompanied by all documents, statistics, and certifications required by the commissioner, including the number, overall value and percentage of total real property parcels of appeals in each county to the boards of equalization, arbitration, hearing officer, and superior court, and the number of taxpayers' failure to appear at any hearing, for the prior tax year, the commissioner shall issue a receipt for the digest and enter an order authorizing the use of said digest for the collection of taxes. All statistics and certifications regarding real property appeals provided to the commissioner under this paragraph shall be made publicly available on the Department of Revenue website.

(2) Nothing in this subsection shall be construed to prevent the superior court from allowing the new digest to be used as the basis for the temporary collection of taxes under Code Section 48-5-310.

(b) Each year the commissioner shall determine if the overall assessment ratio for each county, as computed by the state auditor under paragraph (8) of subsection (b) of Code Section 48-5-274, deviates substantially from the proper assessment ratio as provided in Code Section 48-5-7, and if such deviation exists, the commissioner shall assess against the county governing authority additional state tax in an amount equal to the difference between the amount the state's levy, as prescribed in Code Section 48-5-8, would have produced if the digest had been at the proper assessment ratio and the amount the digest that is actually used for collection purposes will produce. The commissioner shall notify the county governing authority annually of the amount so assessed and this amount shall be due and payable not later than five days after all appeals have been exhausted or the time for appeal has expired or the final date for payment of taxes in the county, whichever comes latest, and shall bear interest at the rate specified in Code Section 48-2-40 from the due date.

(c) (Effective January 1, 2016) Beginning with tax digests on or after January 1, 2016, no county shall be subject to the assessment authorized by subparagraph (b) of this Code section. (Code 1981, § 48-5-345, enacted by Ga. L. 1988, p. 1763, § 1; Ga. L. 1991, p. 728, § 4; Ga. L.

1992, p. 2494, § 6; Ga. L. 2000, p. 1683, § 7; Ga. L. 2012, p. 694, § 2/HB 729; Ga. L. 2015, p. 1219, § 18/HB 202.)

Delayed effective date. — Paragraph (a)(1) and subsection (c), as set out above, become effective January 1, 2016. For versions of paragraph (a)(1) and subsection (c) in effect until January 1, 2016, see the 2015 amendment note.

The 2012 amendment, effective May 1, 2012, substituted "levy, as prescribed in Code Section 48-5-8," for "levy of one quarter of a mill" near the middle of the first sentence of subsection (b).

The 2015 amendment, effective January 1, 2016, substituted the present provisions of paragraph (a)(1) for the former provisions, which read: "Upon the determination by the commissioner that a county tax digest is in proper form, that the property therein that is under appeal is within the limits of Code Section 48-5-304, and that the digest is accompanied by all documents, statistics, and certifications required by the commissioner, the commissioner shall issue a receipt for the digest and enter an order authorizing the use of said digest for the collection of taxes."; and added subsection (c).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2015, "January 1, 2016" was substituted for "the effective date of this subsection" in subsection (c).

ARTICLE 7

MISCELLANEOUS LOCAL ADMINISTRATIVE PROVISIONS

48-5-380. Refunds of taxes and license fees by counties and municipalities; time and manner of filing claims and actions for refund; authority to approve or disapprove claims.

(a) As provided in this Code section, each county and municipality shall refund to taxpayers any and all taxes and license fees:

(1) Which are determined to have been erroneously or illegally assessed and collected from the taxpayers under the laws of this state or under the resolutions or ordinances of any county or municipality; or

(2) Which are determined to have been voluntarily or involuntarily overpaid by the taxpayers.

(a.1) If property owners have been billed and have remitted property tax payments to either a county or a municipality based on the fair market value of the land and subsequently the fair market value of such land is reduced on an appeal, then the county or the municipality shall reimburse the property owner the difference between tax remitted and the final tax owed for each year in which the incorrect fair market value of the land was used in the calculations.

(b) Any taxpayer from whom a tax or license fee was collected who alleges that such tax or license fee was collected illegally or erroneously may file a claim for a refund with the governing authority of the county or municipality at any time within one year or, in the case of taxes,

three years after the date of the payment of the tax or license fee to the county or municipality. The claim for refund shall be in writing and shall be in the form and shall contain the information required by the appropriate governing authority. The claim shall include a summary statement of the grounds upon which the taxpayer relies. In the event the taxpayer desires a conference or hearing before the governing authority in connection with any claim for a refund, the taxpayer shall so specify in writing in the claim. If the claim conforms to the requirements of this Code section, the governing authority shall grant a conference at a time specified by the governing authority. The governing authority shall consider information contained in the taxpayer's claim for a refund and such other information as is available. The governing authority shall approve or disapprove the taxpayer's claim and shall notify the taxpayer of its action. In the event any claim for refund is approved, the governing authority shall proceed under subsection (a) of this Code section to give effect to the terms of that subsection. No refund provided for in this Code section shall be assignable. Submitting a request for refund to the governing authority is not a prerequisite to bringing suit.

(c) The filing of a request for a refund with the governing authority under subsection (b) of this Code section shall act to stay the time period for initiating suit for a refund. Following the filing of a request for refund with the governing authority, no suit may be commenced until the earlier of the governing authority's denial of the request for refund or the expiration of 90 days from the date of filing the claim. Alternatively, any taxpayer may forgo requesting a refund from the governing authority under subsection (b) of this Code section and elect to proceed directly to filing suit.

(d) Any refunds approved or allowed under this Code section shall be paid from funds of the county, the municipality, the county board of education, the state, or any other entity to which the taxes or license fees were originally paid. Refunds shall be paid within 60 days of the approval of the taxpayer's claim or within 60 days of the entry of a final decision in any action for a refund.

(e) The governing authority of any county, by resolution, and the governing authority of any municipality, by ordinance, shall adopt rules and regulations governing the administration of this Code section and may delegate the administration of this Code section, including the approval or disapproval of claims where the reason for the claim is based on an obvious clerical error, to an appropriate department in local government. In disputed cases where there is no obvious error, the approval or disapproval of claims may not be delegated by the governing authority.

(f) Nothing contained in subsections (b) or (c) of this Code section shall be deemed the exclusive remedy to seek a refund nor deprive

taxpayers of the right to seek a refund mandated by subsection (a) by any other cause of action available at law or equity.

(g) Under no circumstances may a suit for refund be commenced more than five years from the date of the payment of taxes or fees at issue. (Code 1933, §§ 92-3901a, 92-3902a, 92-3903a, 92-3904a, 92-3905a, enacted by Ga. L. 1975, p. 774, § 1; Ga. L. 1978, p. 928, § 1; Code 1933, § 91A-1601, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 46; Ga. L. 1980, p. 463, § 2; Ga. L. 2010, p. 1104, § 7-1/SB 346; Ga. L. 2014, p. 672, § 5/HB 755.)

The 2014 amendment, effective July 1, 2014, added subsection (a.1); in subsection (b), substituted the present provisions of the first sentence for the former provisions, which read: "In any case in which it is determined that an erroneous or illegal collection of any tax or license fee has been made by a county or municipality or that a taxpayer has voluntarily or involuntarily overpaid any tax or license fee, the taxpayer from whom the tax or license fee was collected may file a claim for a refund with the governing authority of the county or municipality at any time within one year or, in the case of taxes, three years after the date of the payment of the tax or license fee to the county or municipality." and added the last sentence; substituted the present provisions of subsection (c) for the former provisions, which read: "Any taxpayer whose claim for refund is denied by the governing authority of the county or municipality or whose claim is not denied or approved by the governing authority within one year from the date of filing the claim shall have the right to bring an action for a refund in the superior court of the county in which the claim arises. No action or proceeding for the recovery of a refund shall be commenced before the expiration of one year from the date of filing the claim for refund unless the governing authority of the county or municipality renders a decision on the claim within the one-year period. No action or proceeding for the recovery of a refund shall be commenced after the expiration of one year from the date the claim is denied. The one-year period prescribed in this subsection for filing an action for a refund shall be extended for such period as may be agreed upon in writing between the taxpayer and the governing authority of the county or municipality during the one-year period or any extension of the one-year period."; in the first sentence of subsection (d), inserted "the" preceding "municipality" and inserted "county" preceding "board"; and added subsections (f) and (g).

ARTICLE 8

SCHOOL TAXATION

48-5-405. (For effective date, see note.) Levy and collection of tax by municipalities for independent school systems; authorized purposes for expenditures.

(a) (For effective date, see note.) Each municipality authorized by law to maintain an independent school system may support and maintain the public common schools within the independent school system by levy of ad valorem taxes at the rate fixed by law upon all taxable property within the limits of the independent school system. The board of education of the municipality or other authority charged

with the duty of operating the independent school system shall annually recommend to the governing authority of the municipality the rate of the tax levy, within the limitations fixed by law, to be made upon all taxable property within the limits of the independent school system. Taxes levied and collected for support and maintenance of the independent school system by the municipal governing authority shall be appropriated, when collected, by the governing authority to the board of education or other authority charged with the duty of operating the independent school system. Funds appropriated to an independent school system shall be expended by the board of education or other authority charged with the duty of operating the independent school system only for educational purposes including, but not limited to, school lunch purposes. The term "school lunch purposes" shall include payment of costs and expenses incurred in the purchase of school lunchroom supplies; the purchase, replacement, or maintenance of school lunchroom equipment; the transportation, storage, and preparation of foods; and all current operating expenses incurred in the management and operation of school lunch programs in the public common schools of the independent school system. "School lunch purposes" shall not include the purchase of foods.

(b) This Code section shall be cumulative of all general and local laws authorizing municipalities to levy taxes for the support of independent school systems permitted to be maintained by law. (Ga. L. 1962, p. 628, §§ 1, 2; Code 1933, § 91A-1706, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 996, §§ 3, 6; Ga. L. 1983, p. 414, § 1; Ga. L. 2015, p. 1219, § 19/HB 202.)

Delayed effective date. — Subsection (a), as set out above, becomes effective January 1, 2016. For version of subsection (a), in effect until January 1, 2016, see the 2015 amendment note.

The 2015 amendment, effective January 1, 2016, in subsection (a), substituted "independent school system" for "municipality" at the end of the first and second sentences.

JUDICIAL DECISIONS

Use of local school taxes for redevelopment. — School system, development authority, and others were properly granted summary judgment in a suit challenging the allocation of school taxes because the 2008 amendments to Ga. Const. 1983, Art. IX, Sec. II, Para. VII(b) and O.C.G.A. § 36-44-9(g), governing tax allocation districts, changed the law and retroactively allowed use of local school taxes for general redevelopment purposes. Sherman v. Atlanta Indep. Sch. Sys., 293 Ga. 268, 744 S.E.2d 26 (2013).

ARTICLE 9

FRANCHISES

48-5-421.1. Certain property projects shall not constitute special franchises.

Any property which is exempt from ad valorem taxation pursuant to subparagraphs (a)(1)(E) or (a)(1)(F) of Code Section 48-5-41 shall not constitute a special franchise for purposes of this article and shall not be subject to the provisions of this article. (Code 1981, § 48-5-421.1, enacted by Ga. L. 2010, p. 987, § 2/HB 1186; Ga. L. 2014, p. 679, § 2/HB 788.)

The 2014 amendment, effective January 1, 2015, substituted "subparagraphs (a)(1)(E) or (a)(1)(F)" for "subparagraph (a)(1)(E)" in this Code section. For effective date of this amendment, see the delayed effective date note.

Editor's notes. — The state-wide referendum (Ga. L. 2014, p. 679, § 4/HB 788), which ratified the 2014 amendment of this Code section, was approved by a majority of qualified voters at the November 4, 2014, general election.

ARTICLE 10

AD VALOREM TAXATION OF MOTOR VEHICLES AND MOBILE HOMES

Part 1

General Provisions

48-5-441. Classification of motor vehicles and mobile homes as separate classes of tangible property for ad valorem taxation purposes; procedures prescribed in article exclusive.

(a)(1) For the purposes of ad valorem taxation, motor vehicles shall be classified as a separate and distinct class of tangible property. Such class of tangible property shall be divided into two distinct and separate subclasses of tangible property with one subclass including heavy-duty equipment motor vehicles as defined in Code Section 48-5-505 and the other subclass including all other motor vehicles. The procedures prescribed by this article for returning motor vehicles, excluding heavy-duty equipment motor vehicles as defined in Code Section 48-5-505, for taxation, determining the applicable rates for taxation, and collecting the ad valorem tax imposed on motor vehicles shall be exclusive.

(2) This subsection shall not apply to motor vehicles subject to Code Section 48-5-441.1.

(b) For the purposes of ad valorem taxation, mobile homes shall be classified as a separate and distinct class of tangible property. The procedures prescribed by this article for returning mobile homes for taxation, determining the applicable rates for taxation, and collecting the ad valorem tax imposed on mobile homes shall be exclusive.

(c)(1) For the purposes of ad valorem taxation, commercial vehicles shall be classified as a separate and distinct class of tangible property. The procedures prescribed by this article for returning commercial vehicles for taxation and for determining the valuation of commercial vehicles shall be exclusive and as provided for in Code Section 48-5-442.1. All other procedures prescribed by this article for the taxation of motor vehicles shall be applicable to the taxation of commercial vehicles.

(2) This subsection shall not apply to motor vehicles subject to Code Section 48-5-441.1. (Ga. L. 1966, p. 517, § 1; Ga. L. 1976, p. 1529, § 1; Code 1933, §§ 91A-1901, 91A-1920, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1997, p. 957, § 2; Ga. L. 1998, p. 1145, § 1; Ga. L. 2012, p. 257, § 1-2/HB 386.)

The 2012 amendment, effective March 1, 2013, designated the existing provisions of subsection (a) as paragraph (a)(1) and added paragraph (a)(2); designated the existing provisions of subsection (c) as paragraph (c)(1); added paragraph (c)(2); and substituted "shall be classified" for "are classified" in the first sentences of paragraphs (a)(1) and (c)(1) and subsection (b).

Editor's notes. — Ga. L. 2012, p. 257, § 7-1(h)/HB 386, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of general law as it existed immediately prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-1(i)/HB 386, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-2/HB 386, not codified by the General Assembly, provides for severability.

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 112 (2012).

48-5-441.1. Classification of motor vehicles for purposes of ad valorem taxation.

In accordance with Article VII, Section I, Paragraph III(b)(3) of the Georgia Constitution, motor vehicles subject to the provisions of Code Section 48-5C-1 shall be classified as a separate and distinct class of tangible property for the purposes of ad valorem taxation. (Code 1981, § 48-5-441.1, enacted by Ga. L. 2012, p. 257, § 1-3/HB 386.)

Effective date. — This Code section becomes effective March 1, 2013.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2012, "Code

Section 48-5C-1" was substituted for "Code Section 48-5B-1" in this Code section.

Editor's notes. — Ga. L. 2012, p. 257, § 7-1(h)/HB 386, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of general law as it existed immediately prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-1(i)/HB 386, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-2/HB 386, not codified by the General Assembly, provides for severability.

Law reviews. — For article on the 2012 enactment of this Code section, see 29 Ga. St. U.L. Rev. 112 (2012).

48-5-442.1. Definitions; determination of valuation of commercial vehicle for ad valorem tax purposes.

(a) As used in this Code section, the term:

(1) "Georgia fleet mileage ratio" means a fraction, the numerator of which is the total miles driven in Georgia by all commercial vehicles registered in Georgia under the International Registration Plan pursuant to Code Section 40-2-88, and the denominator of which is the total miles driven within and without Georgia by such commercial vehicles.

(2) "Gross capital cost" means the freight on board, delivered cost of a commercial vehicle to the purchaser of such commercial vehicle but shall not include any excise or use taxes paid as a part of such purchase.

(b) The valuation of a commercial vehicle, trailer, or semitrailer for ad valorem tax purposes shall be determined as follows:

(1) The gross capital cost of a commercial vehicle, trailer, or semitrailer shall be multiplied by a percentage factor representing the remainder of such vehicle's value after depreciation according to a depreciation schedule which the commissioner shall annually prepare and distribute to each of the tax collectors and tax commissioners. Except as provided in paragraph (2) of this subsection, the resulting value of such commercial vehicle, trailer, or semitrailer shall be assessed at the rate of 40 percent of such value for ad valorem tax purposes in this state; or

(2) For a trailer, a semitrailer, or a commercial vehicle which is not registered in Georgia under the International Registration Plan pursuant to Code Section 40-2-88, the assessment calculated under paragraph (1) of this subsection shall be multiplied by the Georgia fleet mileage ratio. The resulting apportioned value shall be the Georgia assessed value of the commercial vehicle, trailer, or semi-

trailer for ad valorem tax purposes in this state. (Code 1981, § 48-5-442.1, enacted by Ga. L. 1997, p. 957, § 4; Ga. L. 2013, p. 32, § 3/HB 463.)

The 2013 amendment, effective April 10, 2013, inserted ", trailer, or semi-trailer" throughout subsection (b); substituted "; or" for a period at the end of paragraph (b)(1); and inserted "not" in the first sentence of paragraph (b)(2). See editor's note for applicability.

Editor's notes. — Ga. L. 2013, p. 32, § 5/HB 463, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all registration, annual, or license fees of apportionable vehicles and ad valorem and alternative ad valorem taxes of apportionable vehicles on or after January 1, 2014.

48-5-451. Penalty for failure to make return or pay tax on motor vehicle or mobile home.

(a) Except as otherwise provided in subsection (b) of this Code section, every owner of a motor vehicle or a mobile home, in addition to the ad valorem tax due on the motor vehicle or mobile home, shall be liable for a penalty of 10 percent of the tax due or $5.00, whichever is greater, for the failure to make the return or pay the tax in accordance with this article.

(b) Any Georgia resident who voluntarily cancels the registration of his or her motor vehicle pursuant to Code Section 40-2-10 shall not be assessed any penalty for failure to pay the tax due on a motor vehicle under subsection (a) of this Code section for any such period of time. Any such person shall remain liable for the ad valorem tax due on a motor vehicle he or she owns. This subsection shall not apply to motor vehicles subject to Code Section 48-5-441.1. The commissioner shall promulgate any necessary rules and forms to implement the provisions of this subsection. (Ga. L. 1966, p. 517, § 8; Ga. L. 1976, p. 1529, § 9; Code 1933, § 91A-1931, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1990, p. 2048, § 16; Ga. L. 1995, p. 809, § 16; Ga. L. 1996, p. 1118, § 15; Ga. L. 2015, p. 825, § 1/HB 94.)

The 2015 amendment, effective July 1, 2015, designated the previously existing provisions as subsection (a), and in such subsection, substituted "Except as otherwise provided in subsection (b) of this Code section, every" for "Every"; and added subsection (b). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 825, § 2/HB 94, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall be applicable to any penalties assessed on or after that date. Any proceedings instituted for the collection of penalties under the law in existence prior to July 1, 2015, shall not be affected by the enactment of this Act."

PART 2

MOTOR VEHICLES

48-5-478. Constitutional exemption from ad valorem taxation for disabled veterans.

(a) A motor vehicle owned by or leased to a disabled veteran who is a citizen and resident of this state and on which such disabled veteran actually places the free disabled veteran motor vehicle license plate he or she receives pursuant to Code Section 40-2-69 is hereby exempted from all ad valorem taxes for state, county, municipal, and school purposes. As used in this Code section, the term "disabled veteran" means any veteran who was discharged under honorable conditions and who has been adjudicated by the United States Department of Veterans Affairs as being 100 percent totally disabled or as being less than 100 percent totally disabled but is being compensated at the 100 percent level due to individual unemployability and is entitled to receive service connected benefits and any veteran who is receiving or who is entitled to receive a statutory award from the United States Department of Veterans Affairs for:

(1) Loss or permanent loss of use of one or both feet;

(2) Loss or permanent loss of use of one or both hands;

(3) Loss of sight in one or both eyes; or

(4) Permanent impairment of vision of both eyes of the following status: central visual acuity of 20/200 or less in the better eye, with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends on angular distance no greater than 20 degrees in the better eye.

(b) Once a disabled veteran has established his or her eligibility for such ad valorem tax exemption by being 100 percent totally disabled, he or she shall be entitled to receive such ad valorem tax exemption in succeeding years thereafter. A disabled veteran who claims 100 percent total disability shall furnish proof of such disability through a letter from the United States Department of Veterans Affairs.

(c) Once a disabled veteran has established his or her eligibility for such ad valorem tax exemption but his or her disability has not been adjudicated a 100 percent total disability, he or she shall be entitled to such ad valorem tax exemption in succeeding years upon furnishing, on an annual basis, proof of his or her status as a disabled veteran through a letter from the United States Department of Veterans Affairs.

(d) In the event of the death of the disabled veteran who received such ad valorem tax exemption pursuant to this Code section, upon

complying with the motor vehicle laws relating to registration and licensing of motor vehicles, his or her unmarried surviving spouse or minor child may continue to receive the exemption. (Code 1981, § 48-5-478, enacted by Ga. L. 1984, p. 1058, § 8; Ga. L. 1985, p. 149, § 48; Ga. L. 1990, p. 45, § 1; Ga. L. 1998, p. 259, § 2; Ga. L. 1999, p. 81, § 48; Ga. L. 2015, p. 816, § 7/HB 48.)

The 2015 amendment, effective July 1, 2015, designated the previously existing provisions as subsection (a); in subsection (a), in the introductory paragraph, in the first sentence, substituted "this state" for "Georgia" and "pursuant to Code Section 40-2-69" for "from the State of Georgia" and in the second sentence, substituted "As used in this Code section, the term 'disabled veteran' means any veteran" for "The term 'disabled veteran,' as used in this Code section, means any wartime veteran" at the beginning and substituted "totally disabled or as being less than 100 percent totally disabled but is being compensated at the 100 percent level due to individual unemployability and is entitled to receive service connected benefits" for "totally and permanently disabled and entitled to receive service-connected benefits"; inserted "of" at the end of paragraph (a)(3); and in paragraph (a)(4), substituted "central" for "Central"; and added subsections (b) through (d).

Part 3

Mobile Homes

48-5-492. (For effective date, see note.) Issuance of mobile home location permits; issuance and display of decals.

(a) Each year every owner of a mobile home subject to taxation under this article shall obtain on or before April 1 from the tax collector or tax commissioner of the county of taxation of the mobile home a mobile home location permit. The issuance of the permit by the tax collector or tax commissioner shall be evidenced by the issuance of a decal, the color of which shall be prescribed for each year by the commissioner. Each decal shall reflect the county of issuance and the calendar year for which the permit is issued. The decal shall be prominently attached and displayed on the mobile home by the owner.

(b) Except as provided for mobile homes owned by a dealer, no mobile home location permit shall be issued by the tax collector or tax commissioner until all ad valorem taxes due on the mobile home have been paid. Each year every owner of a mobile home situated in this state on January 1 which is not subject to taxation under this article shall obtain on or before April 1 from the tax collector or tax commissioner of the county where the mobile home is situated a mobile home location permit. The issuance of the permit shall be evidenced by the issuance of a decal which shall reflect the county of issuance and the calendar year for which the permit is issued. The decal shall be prominently attached and displayed on the mobile home by the owner. (Ga. L. 1976, p. 1529, § 5; Ga. L. 1978, p. 1459, § 1; Code 1933,

§ 91A-1924, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 49; Ga. L. 1979, p. 538, § 6; Ga. L. 1982, p. 575, §§ 6, 13; Ga. L. 1984, p. 22, § 48; Ga. L. 1992, p. 1683, § 1; Ga. L. 1992, p. 2411, § 9; Ga. L. 1999, p. 667, § 3D; Ga. L. 2015, p. 1219, § 20/HB 202.)

Delayed effective date. — This Code section, as set out above, becomes effective January 1, 2016. For version of this Code section in effect until January 1, 2016, see the 2015 amendment note.

The 2015 amendment, effective January 1, 2016, substituted "April 1" for "May 1" in subsections (a) and (b).

48-5-493. (For effective date, see note.) Failure to attach and display decal; penalties; venue for prosecution.

(a)(1) It shall be unlawful to fail to attach and display on a mobile home the decal as required by Code Section 48-5-492.

(2) (For effective date, see note.) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $100.00 nor more than $300.00, except that upon receipt of proof of purchase of a decal prior to the date of the issuance of a summons, the fine shall be $50.00; provided, however, that in the event such person owns more than one mobile home in an individual mobile home park, then the maximum fine under this paragraph for such person with respect to such mobile home park shall not exceed $1,000.00.

(b)(1) It shall be unlawful for any person to move or transport any mobile home which is required to and which does not have attached and displayed thereon the decal provided for in Code Section 48-5-492.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor and shall be punished by a fine of not less than $200.00 nor more than $1,000.00 or by imprisonment for not more than 12 months, or both.

(c) Violation of subsection (a) or (b) of this Code section may be prosecuted in the magistrate court of the county where the mobile home location permit is to be issued in the manner prescribed for the enforcement of county ordinances set forth in Article 4 of Chapter 10 of Title 15. (Code 1933, § 91A-9945, enacted by Ga. L. 1980, p. 436, § 1; Ga. L. 1990, p. 780, § 1; Ga. L. 1992, p. 2411, § 10; Ga. L. 2015, p. 1219, § 21/HB 202.)

Delayed effective date. — Paragraph (a)(2), as set out above, becomes effective January 1, 2016. For version of paragraph (a)(2) in effect until January 1, 2016, see the 2015 amendment note.

The 2015 amendment, effective January 1, 2016, in paragraph (a)(2), substituted "not less than $100.00 nor more than $300.00, except that upon receipt of proof of purchase of a decal prior to the

date of the issuance of a summons, the fine shall be $50.00; provided, however, that in the event such person owns more than one mobile home in an individual mobile home park, then the maximum fine under this paragraph for such person with respect to such mobile home park shall not exceed $1,000.00" for "not less than $25.00 nor more than $200.00, except that upon receipt of proof of purchase of a decal prior to the date of the issuance of a summons, the fine shall be $25.00" at the end.

48-5-494. (For effective date, see note.) Returns for taxation; application for and issuance of mobile home location permits upon payment of taxes due.

Each year every owner of a mobile home subject to taxation under this article shall return the mobile home for taxation and shall pay the taxes due on the mobile home at the time the owner applies for the mobile home location permit, or at the time of the first sale or transfer of the mobile home after December 31, or on April 1, whichever occurs first. If the owner returns such owner's mobile home for taxation prior to the date that the application for the mobile home location permit is required, such owner shall apply for the permit at the time such owner returns the mobile home for taxation. (Ga. L. 1976, p. 1529, § 6; Code 1933, § 91A-1925, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 538, § 7; Ga. L. 1982, p. 575, §§ 7, 14; Ga. L. 1984, p. 22, § 48; Ga. L. 1992, p. 1684, § 1; Ga. L. 1992, p. 2411, § 11; Ga. L. 1999, p. 667, § 3E; Ga. L. 2015, p. 1219, § 22/HB 202.)

Delayed effective date. — This Code section, as set out above, becomes effective January 1, 2016. For version of Code section in effect until January 1, 2016, see the 2015 amendment note.

The 2015 amendment, effective January 1, 2016, substituted "April 1" for "May 1" in the first sentence.

Part 5

Farm Equipment

48-5-504. Self-propelled farm equipment as subclassification of motor vehicle for ad valorem taxation purposes.

(a) As used in this Code section, the term:

(1) "Dealer" means any person who is engaged in the business of selling farm equipment at retail.

(2) "Farm equipment" means any vehicle as defined in Code Section 40-1-1 which is self-propelled and which is designed and used primarily for agricultural, horticultural, forestry, or livestock raising operations.

(b) Self-propelled farm equipment which is owned by a dealer and held in inventory for sale or resale shall constitute a separate subclas-

sification of motor vehicle within the motor vehicle classification of tangible property for ad valorem taxation purposes. The procedures prescribed in this chapter for returning self-propelled farm equipment for ad valorem taxation, determining the application rates for taxation, and collecting the ad valorem taxes imposed on self-propelled farm equipment do not apply to self-propelled farm equipment which is owned by a dealer and held in inventory for sale or resale. Such self-propelled farm equipment which is owned by a dealer and held in inventory for sale or resale shall not be returned for ad valorem taxation, shall not be taxed, and no taxes shall be collected on such self-propelled farm equipment until it is transferred and then otherwise, if at all, becomes subject to taxation as provided in this chapter. (Code 1981, § 48-5-504, enacted by Ga. L. 2003, p. 190, § 1; Ga. L. 2010, p. 878, § 48/HB 1387; Ga. L. 2015, p. 947, § 2/HB 374.)

The 2015 amendment, effective July 1, 2015, inserted "forestry," near the end of paragraph (a)(2).

Part 7

Watercraft Held in Inventory for Resale

48-5-504.40. Watercraft held in inventory for resale exempt from taxation for limited period of time.

(a) As used in this Code section, the term:

(1) "Dealer" means any person who is engaged in the business of selling watercraft at retail.

(2) "Watercraft" means any vehicle which is self-propelled or which is capable of self-propelled water transportation, or both.

(b) Watercraft owned by a dealer and held in inventory for sale or resale shall constitute a separate classification of tangible property for ad valorem taxation purposes. The procedures prescribed in this chapter for returning watercraft for ad valorem taxation, determining the application rates for taxation, and collecting the ad valorem taxes imposed on watercraft do not apply to watercraft owned by a dealer and held in inventory for sale or resale. For the period commencing January 1, 2016, and concluding December 31, 2019, such watercraft owned by a dealer and held in inventory for sale or resale shall not be returned for ad valorem taxation and shall not be taxed, and no taxes shall be collected on such watercraft until it is transferred and then otherwise, if at all, becomes subject to taxation as provided in this chapter. (Code 1981, § 48-5-504.40, enacted by Ga. L. 2006, p. 674, § 1/HB 1249; Ga. L. 2008, p. 944, § 1/HB 1046; Ga. L. 2010, p. 575, § 1/HB 1105; Ga. L. 2015, p. 1351, § 1/HB 457.)

The 2015 amendment, effective May 12, 2015, in subsection (b), substituted "Watercraft owned" for "Watercraft which is owned" at the beginning, substituted "watercraft owned" for "watercraft which is owned" in the second and third sentences, substituted "January 1, 2016, and concluding December 31, 2019" for "January 1, 2009, and concluding December 31, 2013" near the beginning of the third sentence, and substituted "taxation and" for "taxation," in the middle of the third sentence. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 1351, § 2/HB 457, not codified by the General Assembly, provides, in part, that this Act shall apply to all tax years beginning on and after January 1, 2016, and ending on December 31, 2019.

ARTICLE 10A

AD VALOREM TAXATION OF HEAVY-DUTY EQUIPMENT MOTOR VEHICLES

48-5-506.1. Partial exemption from ad valorem taxation of heavy-duty equipment motor vehicles.

Repealed by Ga. L. 2009, p. 942, § 2/HB 318, effective December 31, 2010.

Editor's notes. — This Code section was based on Code 1981, § 48-5-506.1, enacted by Ga. L. 2009, p. 942, § 2/HB 318.

ARTICLE 11

AD VALOREM TAXATION OF PUBLIC UTILITIES

48-5-511. Returns of public utilities to commissioner; itemization and fair market value of property; other information; apportionment to more than one tax jurisdiction.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Mandamus to require commissioner to accept returns. — In a gas company's suit against the state revenue commissioner for mandamus compelling the commissioner to accept its property tax returns under O.C.G.A. §§ 48-1-2(21) and 48-5-511(a), remand was proper to determine if the company had an acceptable alternative remedy in its pending county tax appeals under O.C.G.A. § 48-5-311, if the commissioner could be made a party to those appeals by joinder or some other procedure. Southern LNG, Inc. v. MacGinnitie, 294 Ga. 657, 755 S.E.2d 683 (2014).

48-5-519. Taxation of railroad equipment companies doing business in state; exemption of railroad company operating railroad; collecting and remitting taxes; execution for failure to make return.

(a) Any person owning, leasing, furnishing, or operating any kind of railroad cars on any railroad in this state shall be deemed a railroad equipment company. Every railroad equipment company shall be required to make returns to the commissioner and shall be taxed as follows:

(1) Ascertain the total number and the value of all cars of the railroad equipment company, the total car-wheel mileage made by the cars in the United States, and the total car-wheel mileage in this state;

(2) Tax the cars at the regular rate imposed on property in this state on a valuation based on the proportion to the entire value of the cars that the car-wheel mileage made in this state bears to the entire car-wheel mileage of the cars in the United States; and

(3) Ascertain the total track mileage in each local tax jurisdiction in this state and tax the cars at the regular rate imposed on property in each local tax jurisdiction on a valuation based on the proportion to the entire value of the cars as determined in paragraph (2) of this subsection that the track mileage in the local tax jurisdiction bears to the entire track mileage in this state.

(b) The returns shall be made to the commissioner by the chief executive officer in charge of the cars in this state. The final assessment of the property of railroad equipment companies shall be fixed in the same manner as the proposed assessments of property of public utilities under this article and Code Section 48-2-18, except that with respect to railroad equipment companies, such assessment shall be final rather than proposed. By following the procedure set forth in subsection (c) of Code Section 48-2-18 for appeals of proposed assessments of public utility property, any railroad equipment company may bring in the Superior Court of Fulton County or in the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50 a de novo action of the final assessment so fixed.

(c) For the purposes of this Code section, a railroad company operating a railroad is not a railroad equipment company.

(d)(1) The commissioner shall collect all taxes levied by this Code section and shall remit all taxes collected to the authorities entitled thereto, less 1 percent of the amount collected, which shall be paid into the general fund of the state treasury in order to defray the costs of collection.

(2) The commissioner may submit tax bills to railroad equipment companies in one or more stages each year; and the taxes reflected in each bill shall be due 60 days after the commissioner mails the bill to the company and, if not so paid, shall bear interest at the rate specified in Code Section 48-2-40 and become subject to penalty in accordance with Code Section 48-2-44. The commissioner shall remit the taxes collected at least once each year. In arriving at the amount to be billed in each instance, the commissioner shall utilize the millage rate established by each taxing jurisdiction for the year in question unless no such rate has been finally established at the time the bill in question is prepared, in which case the commissioner may decline to include such jurisdiction in the billing or may utilize a millage rate established by court order.

(3) All taxes collected under a millage rate which is later changed shall be collected subject to adjustment upward or downward, as the case may be. Such adjustments may be billed or refunded separately or may be made by offset the following year, in the discretion of the commissioner. If any refunds are made separately, they shall be made by the local taxing jurisdiction.

(4) This subsection shall apply to all tax years beginning on or after January 1, 1981.

(e)(1) If any chief executive officer of a railroad equipment company required to make a return to the commissioner by this Code section fails to return the taxable property or pay to the state all taxes for which such company may be liable by reason of the return, the commissioner shall issue an execution for the amount of taxes due, according to the law, together with costs and penalties.

(2) The executions issued by the commissioner against any such company shall be directed to all sheriffs, constables, and other lawful officers of this state with directions to levy the execution on the property of the corporation or company and with the authority to issue and serve garnishments upon the debtors of the corporation or company. (Ga. L. 1927, p. 99, § 9; Code 1933, § 92-2606; Ga. L. 1935, p. 11, § 9; Code 1933, § 91A-2209, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 1735, § 1; Ga. L. 1980, p. 1737, § 1; Ga. L. 1981, p. 1857, §§ 20, 21; Ga. L. 1988, p. 1568, § 9; Ga. L. 1990, p. 1337, § 4; Ga. L. 2012, p. 318, § 7/HB 100.)

The 2012 amendment, effective January 1, 2013, in subsection (b), added a comma following "companies" near the middle of the second sentence, and substituted the present provisions of the third sentence for the former provisions, which read: "Any railroad equipment company may bring in the Superior Court of Fulton County a de novo action of the assessment so fixed." See editor's note for applicability.

Editor's notes. — Ga. L. 2012, p. 318, § 16(b)/HB 100, not codified by the General Assembly, provides that: "Sections 1

through 14 of this Act shall become effective on January 1, 2013, provided that cases pending on January 1, 2013, shall continue to be governed by the law in effect on December 31, 2012, until the conclusion of the case."

CHAPTER 5B

MORATORIUM PERIOD FOR VALUATION INCREASES IN PROPERTY

Sec.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2012, Chapter 5B of Title 48, as enacted by Ga. L. 2012, p. 257, § 1-4/HB 386, was redesignated as Chapter 5C.

48-5B-1. Moratorium on increases in value; corrections of errors in valuation; decrease in value; fair market value for improvements; role of commissioner.

Reserved. Repealed by Ga. L. 2009, p. 780, § 1/HB 233, effective January 10, 2011.

Editor's notes. — This chapter consisted of Code Section 48-5B-1, relating to the moratorium period for valuation increases in property, and was based on Code 1981, § 48-5B-1, enacted by Ga. L. 2009, p. 780, § 1/HB 233; Ga. L. 2010, p. 1104, § 6-2/SB 346.

Ga. L. 2014, p. 866, § 48/SB 340, reserved the designation of this chapter, effective April 29, 2014.

Law reviews. — For annual survey on real property, see 66 Mercer L. Rev. 151 (2014).

CHAPTER 5C

ALTERNATIVE AD VALOREM TAX ON MOTOR VEHICLES

Sec.

Effective date. — This chapter became effective March 1, 2013.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2012, Chapter 5B of Title 48, as enacted by Ga. L. 2012, p. 257, § 1-4/HB 386, was redesignated as Chapter 5C.

Editor's notes. — Ga. L. 2012, p. 257, § 7-1(h)/HB 386, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of general law as it existed immediately prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-1(i)/HB 386, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-2/HB 386, not codified by the General Assembly, provides for severability.

48-5C-1. (For effective date, see note.) Definitions; exemption from taxation; allocation and disbursement of proceeds collected by tag agents; fair market value of vehicle appealable; report.

(a) As used in this Code section, the term:

(1) "Fair market value of the motor vehicle" means:

(A) For a used motor vehicle, the average of the current fair market value and the current wholesale value of a motor vehicle for a vehicle listed in the current motor vehicle ad valorem assessment manual utilized by the state revenue commissioner and based upon a nationally recognized motor vehicle industry pricing guide for fair market and wholesale market values in determining the taxable value of a motor vehicle under Code Section 48-5-442, and, in the case of a used car dealer, less any reduction for the trade-in value of another motor vehicle;

(B) For a used motor vehicle which is not so listed in such current motor vehicle ad valorem assessment manual, the value from the bill of sale or the value from a reputable used car market guide designated by the commissioner, whichever is greater, and, in the case of a used car dealer, less any reduction for the trade-in value of another motor vehicle;

(C) Upon written application and supporting documentation submitted by an applicant under this Code section, a county tag agent may deviate from the fair market value as defined in subparagraph (A) or (B) of this paragraph based upon mileage and

condition of the used vehicle. Supporting documentation may include, but not be limited to, bill of sale, odometer statement, and values from reputable pricing guides. The fair market value as determined by the county tag agent pursuant to this subparagraph shall be appealable as provided in subsection (e) of this Code section; or

(D) For a new motor vehicle, the greater of the retail selling price or, in the case of a lease of a new motor vehicle, the agreed upon value of the vehicle pursuant to the lease agreement or the average of the current fair market value and the current wholesale value of a motor vehicle for a vehicle listed in the current motor vehicle ad valorem assessment manual utilized by the state revenue commissioner in determining the taxable value of a motor vehicle under Code Section 48-5-442, less any reduction for the trade-in value of another motor vehicle and any rebate or any cash discounts provided by the selling dealer and taken at the time of sale. The retail selling price or agreed upon value shall include any charges for labor, freight, delivery, dealer fees, and similar charges and dealer add-ons and mark-ups, but shall not include any extended warranty or maintenance agreement itemized on the dealer's invoice to the customer or any finance, insurance, and interest charges for deferred payments billed separately.

(2) "Immediate family member" means spouse, parent, child, sibling, grandparent, or grandchild.

(3) "Loaner vehicle" means a motor vehicle owned by a dealer which is withdrawn temporarily from dealer inventory for exclusive use as a courtesy vehicle loaned at no charge for a period not to exceed 30 days within a 366 day period to any one customer whose motor vehicle is being serviced by such dealer.

(4) "Rental charge" means the total value received by a rental motor vehicle concern for the rental or lease for 31 or fewer consecutive days of a rental motor vehicle, including the total cash and nonmonetary consideration for the rental or lease, including, but not limited to, charges based on time or mileage and charges for insurance coverage or collision damage waiver but excluding all charges for motor fuel taxes or sales and use taxes.

(5) "Rental motor vehicle" means a motor vehicle designed to carry 15 or fewer passengers and used primarily for the transportation of persons that is rented or leased without a driver.

(6) "Rental motor vehicle concern" means a person or legal entity which owns or leases five or more rental motor vehicles and which regularly rents or leases such vehicles to the public for value.

(7) "Trade-in value" means the value of the motor vehicle as stated in the bill of sale for a vehicle which has been traded in to the dealer

in a transaction involving the purchase of another vehicle from the dealer.

(b)(1)(A) Except as otherwise provided in this subsection, any motor vehicle for which a title is issued in this state on or after March 1, 2013, shall be exempt from sales and use taxes to the extent provided under paragraph (95) of Code Section 48-8-3 and shall not be subject to the ad valorem tax as otherwise required under Chapter 5 of this title. Any such motor vehicle shall be titled as otherwise required under Title 40 but shall be subject to a state title fee and a local title fee which shall be alternative ad valorem taxes as authorized by Article VII, Section I, Paragraph III(b)(3) of the Georgia Constitution. Motor vehicles registered under the International Registration Plan shall not be subject to state and local title ad valorem tax fees but shall continue to be subject to apportioned ad valorem taxation under Article 10 of Chapter 5 of this title.

(B)(i) As used in this subparagraph, the term:

(I) "Local base amount" means $1 billion.

(II) "Local current collection amount" means the total amount of sales and use taxes on the sale of motor vehicles under Chapter 8 of this title and motor vehicle local ad valorem tax proceeds under this Code section and Chapter 5 of this title which were collected during the calendar year which immediately precedes the tax year in which the title ad valorem tax adjustments are required to be made under this subparagraph.

(III) "Local target collection amount" means an amount equal to the local base amount added to the product of 2 percent of the local base amount multiplied by the number of years since 2012 with a maximum amount of $1.2 billion.

(IV) "State base amount" means $535 million.

(V) "State current collection amount" means the total amount of sales and use taxes on the sale of motor vehicles under Chapter 8 of this title and motor vehicle state ad valorem tax proceeds under this Code section and Chapter 5 of this title which were collected during the calendar year which immediately precedes the tax year in which the state and local title ad valorem tax rate is to be reviewed for adjustment under division (xiv) of this subparagraph. Notwithstanding the other provisions of this subdivision to the contrary, the term "state current collection amount" for the 2014 calendar year for the purposes of the 2015 review under division (xiv) of this subparagraph shall be adjusted so that such amount is equal

to the amount of motor vehicle state ad valorem tax proceeds that would have been collected under this Code section in 2014 if the combined state and local title ad valorem tax rate was 7 percent of the fair market value of the motor vehicle less any trade-in value plus the total amount of motor vehicle state ad valorem tax proceeds collected under Chapter 5 of this title during 2014.

(VI) "State target collection amount" means an amount equal to the state base amount added to the product of 2 percent of the state base amount multiplied by the number of years since 2012.

(ii) The combined state and local title ad valorem tax shall be at a rate equal to:

(I) For the period commencing March 1, 2013, through December 31, 2013, 6.5 percent of the fair market value of the motor vehicle;

(II) For the 2014 tax year, 6.75 percent of the fair market value of the motor vehicle; and

(III) Except as provided in division (xiv) of this subparagraph, for the 2015 and subsequent tax years, 7 percent of the fair market value of the motor vehicle.

(iii) For the period commencing March 1, 2013, through December 31, 2013, the state title ad valorem tax shall be at a rate equal to 57 percent of the tax rate specified in division (ii) of this subparagraph, and the local title ad valorem tax shall be at a rate equal to 43 percent of the tax rate specified in division (ii) of this subparagraph.

(iv) For the 2014 tax year, the state title ad valorem tax shall be at a rate equal to 55 percent of the tax rate specified in division (ii) of this subparagraph, and the local title ad valorem tax shall be at a rate equal to 45 percent of the tax rate specified in division (ii) of this subparagraph.

(v) For the 2015 tax year, the state title ad valorem tax shall be at a rate equal to 55 percent of the tax rate specified in division (ii) of this subparagraph, and the local title ad valorem tax shall be at a rate equal to 45 percent of the tax rate specified in division (ii) of this subparagraph.

(vi) For the 2016 tax year, except as otherwise provided in division (xiii) of this subparagraph, the state title ad valorem tax shall be at a rate equal to 53.5 percent of the tax rate specified in division (ii) of this subparagraph, and the local title ad valorem

tax shall be at a rate equal to 46.5 percent of the tax rate specified in division (ii) of this subparagraph.

(vii) For the 2017 tax year, except as otherwise provided in divisions (xiii) and (xiv) of this subparagraph, the state title ad valorem tax shall be at a rate equal to 44 percent of the tax rate specified in division (ii) of this subparagraph, and the local title ad valorem tax shall be at a rate equal to 56 percent of the tax rate specified in division (ii) of this subparagraph.

(viii) For the 2018 tax year, except as otherwise provided in division (xiii) of this subparagraph, the state title ad valorem tax shall be at a rate equal to 40 percent of the tax rate specified in division (ii) of this subparagraph, and the local title ad valorem tax shall be at a rate equal to 60 percent of the tax rate specified in division (ii) of this subparagraph.

(ix) For the 2019 tax year, except as otherwise provided in divisions (xiii) and (xiv) of this subparagraph, the state title ad valorem tax shall be at a rate equal to 36 percent of the tax rate specified in division (ii) of this subparagraph, and the local title ad valorem tax shall be at a rate equal to 64 percent of the tax rate specified in division (ii) of this subparagraph.

(x) For the 2020 tax year, except as otherwise provided in division (xiii) of this subparagraph, the state title ad valorem tax shall be at a rate equal to 34 percent of the tax rate specified in division (ii) of this subparagraph, and the local title ad valorem tax shall be at a rate equal to 66 percent of the tax rate specified in division (ii) of this subparagraph.

(xi) For the 2021 tax year, except as otherwise provided in division (xiii) of this subparagraph, the state title ad valorem tax shall be at a rate equal to 30 percent of the tax rate specified in division (ii) of this subparagraph, and the local title ad valorem tax shall be at a rate equal to 70 percent of the tax rate specified in division (ii) of this subparagraph.

(xii) For the 2022 and all subsequent tax years, except as otherwise provided in division (xiii) of this subparagraph for tax years 2022, 2023, and 2024 and except as otherwise provided in division (xiv) of this subparagraph for tax year 2023, the state title ad valorem tax shall be at a rate equal to 28 percent of the tax rate specified in division (ii) of this subparagraph, and the local title ad valorem tax shall be at a rate equal to 72 percent of the tax rate specified in division (ii) of this subparagraph.

(xiii) Beginning in 2016, by not later than January 15 of each tax year through the 2022 tax year, the state revenue commis-

sioner shall determine the local target collection amount and the local current collection amount for the preceding calendar year. If such local current collection amount is equal to or within 1 percent of the local target collection amount, then the state title ad valorem tax rate and the local title ad valorem tax rate for such tax year shall remain at the rate specified in this subparagraph for that year. If the local current collection amount is more than 1 percent greater than the local target collection amount, then the local title ad valorem tax rate for such tax year shall be reduced automatically by operation of this division by such percentage amount as may be necessary so that, if such rate had been in effect for the calendar year under review, the local current collection amount would have produced an amount equal to the local target collection amount, and the state title ad valorem tax rate for such tax year shall be increased by an equal amount to maintain the combined state and local title ad valorem tax rate at the rate specified in division (ii) of this subparagraph. If the local current collection amount is more than 1 percent less than the local target collection amount, then the local title ad valorem tax rate for such tax year shall be increased automatically by operation of this division by such percentage amount as may be necessary so that, if such rate had been in effect for the calendar year under review, the local current collection amount would have produced an amount equal to the local target collection amount, and the state title ad valorem tax rate for such tax year shall be reduced by an equal amount to maintain the combined state and local title ad valorem tax rate at the rate specified in division (ii) of this subparagraph. In the event of an adjustment of such ad valorem tax rates, by not later than January 31 of such tax year, the state revenue commissioner shall notify the tax commissioner of each county in this state of the adjusted rate amounts. The effective date of such adjusted rate amounts shall be January 1 of such tax year.

(xiv) In tax years 2015, 2018, and 2022, by not later than July 1 of each such tax year, the state revenue commissioner shall determine the state target collection amount and the state current collection amount for the preceding calendar year. If such state current collection amount is greater than, equal to, or within 1 percent of the state target collection amount after making the adjustment, if any, required in division (xiii) of this subparagraph, then the combined state and local title ad valorem tax rate provided in division (ii) of this subparagraph shall remain at the rate specified in such division. If the state current collection amount is more than 1 percent less than the state target collection amount after making the adjustment, if any,

required by division (xiii) of this subparagraph, then the combined state and local title ad valorem tax rate provided in division (ii) of this subparagraph shall be increased automatically by operation of this division by such percentage amount as may be necessary so that, if such rate had been in effect for the calendar year under review, the state current collection amount would have produced an amount equal to the state target collection amount, and the state title ad valorem tax rate and the local title ad valorem tax rate for the tax year in which such increase in the combined state and local title ad valorem tax rate shall become effective shall be adjusted from the rates specified in this subparagraph or division (xiii) of this subparagraph for such tax year such that the proceeds from such increase in the combined state and local title ad valorem tax rate shall be allocated in full to the state. In the event of an adjustment of the combined state and local title ad valorem tax rate, by not later than August 31 of such tax year, the state revenue commissioner shall notify the tax commissioner of each county in this state of the adjusted combined state and local title ad valorem tax rate for the next calendar year. The effective date of such adjusted combined state and local title ad valorem tax rate shall be January 1 of the next calendar year. Notwithstanding the provisions of this division, the combined state and local title ad valorem tax rate shall not exceed 9 percent.

(xv) The state revenue commissioner shall promulgate such rules and regulations as may be necessary and appropriate to implement and administer this Code section, including, but not limited to, rules and regulations regarding appropriate public notification of any changes in rate amounts and the effective date of such changes and rules and regulations regarding appropriate enforcement and compliance procedures and methods for the implementation and operation of this Code section. The state revenue commissioner may promulgate and implement rules and regulations as may be necessary to permit seller financed sales of used vehicles to be assessed 2.5 percentage points less than the rate specified in division (b)(1)(B)(ii) of this Code section.

(C) The application for title and the state and local title ad valorem tax fees provided for in subparagraph (A) of this paragraph shall be paid to the tag agent in the county where the motor vehicle is to be registered and shall be paid at the time the application for a certificate of title is submitted or, in the case of an electronic title transaction, at the time when the electronic title transaction is finalized. In an electronic title transaction, the state and local title ad valorem tax fees shall be remitted electronically directly to the county tag agent. A dealer of new or used motor

vehicles may accept such application for title and state and local title ad valorem tax fees on behalf of the purchaser of a new or used motor vehicle for the purpose of submitting or, in the case of an electronic title application, finalizing such title application and remitting state and local title ad valorem tax fees.

(D) There shall be a penalty imposed on any person who, in the determination of the commissioner, falsifies any information in any bill of sale used for purposes of determining the fair market value of the motor vehicle. Such penalty shall not exceed $2,500.00 as a state penalty and shall not exceed $2,500.00 as a local penalty as determined by the commissioner. Such determination shall be made within 60 days of the commissioner receiving information of a possible violation of this paragraph.

(E) Except in the case in which an extension of the registration period has been granted by the county tag agent under Code Section 40-2-20, a dealer of new or used motor vehicles that accepts an application for title and state and local title ad valorem tax fees from a purchaser of a new or used motor vehicle and does not submit or, in the case of an electronic title transaction, finalize such application for title and remit such state and local title ad valorem tax fees to the county tag agent within 30 days following the date of purchase shall be liable to the county tag agent for an amount equal to 5 percent of the amount of such state and local title ad valorem tax fees. An additional penalty equal to 10 percent of the amount of such state and local title ad valorem tax fees shall be imposed if such payment is not transmitted within 60 days following the date of purchase. An additional penalty equal to 15 percent of the amount of such state and local title ad valorem tax fees shall be imposed if such payment is not transmitted within 90 days following the date of purchase, and an additional penalty equal to 20 percent of the amount of such state and local title ad valorem tax fees shall be imposed if such payment is not transmitted within 120 days following the date of purchase. An additional penalty equal to 25 percent of the amount of such state and local title ad valorem tax fees shall be imposed for each subsequent 30 day period in which the payment is not transmitted.

(F) A dealer of new or used motor vehicles that accepts an application for title and state and local title ad valorem tax fees from a purchaser of a new or used motor vehicle and converts such fees to his or her own use shall be guilty of theft by conversion and, upon conviction, shall be punished as provided in Code Section 16-8-12.

(2) A person or entity acquiring a salvage title pursuant to subsection (b) of Code Section 40-3-36 shall not be subject to the fee specified

in paragraph (1) of this subsection but shall be subject to a state title ad valorem tax fee in an amount equal to 1 percent of the fair market value of the motor vehicle. Such state title ad valorem tax fee shall be an alternative ad valorem tax as authorized by Article VII, Section I, Paragraph III(b)(3) of the Georgia Constitution.

(c)(1) The amount of proceeds collected by tag agents each month as state and local title ad valorem tax fees, state salvage title ad valorem tax fees, administrative fees, penalties, and interest pursuant to subsection (b) of this Code section shall be allocated and disbursed as provided in this subsection.

(2) For the 2013 tax year and in each subsequent tax year, the amount of such funds shall be disbursed within 20 days following the end of each calendar month as follows:

(A) State title ad valorem tax fees, state salvage title ad valorem tax fees, administrative fees, penalties, and interest shall be remitted to the state revenue commissioner who shall deposit such proceeds in the general fund of the state less an amount to be retained by the tag agent not to exceed 1 percent of the total amount otherwise required to be remitted under this subparagraph to defray the cost of administration. Such retained amount shall be remitted to the collecting county's general fund. Failure by the tag agent to disburse within such 20 day period shall result in a forfeiture of such administrative fee plus interest on such amount at the rate specified in Code Section 48-2-40; and

(B) Local title ad valorem tax fees, administrative fees, penalties, and interest shall be designated as local government ad valorem tax funds. The tag agent shall then distribute the proceeds as specified in paragraph (3) of this subsection.

(3) The local title ad valorem tax fee proceeds required under this subsection shall be distributed as follows:

(A) (For effective date, see note.) The tag agent of the county shall within 20 days following the end of each calendar month allocate and distribute to the county governing authority and to municipal governing authorities, the board of education of the county school district, and the board of education of any independent school district located in such county and in a county in which a sales and use tax is levied for purposes of a metropolitan area system of public transportation, as authorized by the amendment to the Constitution set out at Ga. L. 1964, p. 1008, the governing body of the transportation authority created by the Metropolitan Atlanta Rapid Transit Authority Act of 1965, Ga. L. 1965, p. 2243, as amended, and the amendment to the Constitution set out at Ga. L. 1964, p. 1008, an amount of those proceeds necessary to offset

any reduction in (i) ad valorem tax on motor vehicles collected under Chapter 5 of this title in the taxing jurisdiction of each governing authority and school district from the amount of ad valorem taxes on motor vehicles collected under Chapter 5 of this title in each such governing authority and school district during the same calendar month of 2012 and (ii) with respect to the transportation authority, the monthly average portion of the sales and use tax levied for purposes of a metropolitan area system of public transportation applicable to any motor vehicle titled in a county which levied such tax in 2012. Such amount of tax may be determined by the commissioner for counties which levied such tax in 2012, and any counties which subsequently levy a tax pursuant to a metropolitan area system of public transportation, as authorized by the amendment to the Constitution set out at Ga. L. 1964, p. 1008, the governing body of the transportation authority created by the Metropolitan Atlanta Rapid Transit Authority Act of 1965, Ga. L. 1965, p. 2243, as amended, and the amendment to the Constitution set out at Ga. L. 1964, p. 1008, the Commissioner may determine what amount of sales and use tax would have been collected in 2012, had such tax been levied. This reduction shall be calculated, with respect to (i) above, by subtracting the amount of ad valorem tax on motor vehicles collected under Chapter 5 of this title in each such taxing jurisdiction from the amount of ad valorem tax on motor vehicles collected under Chapter 5 of this title in that taxing jurisdiction in the same calendar month of 2012. In the event that the local title ad valorem tax fee proceeds are insufficient to fully offset such reduction in ad valorem taxes on motor vehicles or the portion of the sales and use tax described in (ii) above, the tag agent shall allocate a proportionate amount of the proceeds to each governing authority and to the board of education of each such school district and the transportation authority, and any remaining shortfall shall be paid from the following month's local title ad valorem tax fee proceeds. In the event that a shortfall remains, the tag agent shall continue to first allocate local title ad valorem tax fee proceeds to offset such shortfalls until the shortfall has been fully repaid; and

(B) Of the proceeds remaining following the allocation and distribution under subparagraph (A) of this paragraph, the tag agent shall allocate and distribute to the county governing authority and to municipal governing authorities, the board of education of the county school district, and the board of education of any independent school district located in such county the remaining amount of those proceeds in the manner provided in this subparagraph. Such proceeds shall be deposited in the general fund of such governing authority or board of education and shall not be subject

to any use or expenditure requirements provided for under any of the following described local sales and use taxes but shall be authorized to be expended in the same manner as authorized for the ad valorem tax revenues on motor vehicles under Chapter 5 of this title which would otherwise have been collected for such governing authority or board of education. Of such remaining proceeds:

(i) An amount equal to one-third of such proceeds shall be distributed to the board of education of the county school district and the board of education of each independent school district located in such county in the same manner as required for any local sales and use tax for educational purposes levied pursuant to Part 2 of Article 3 of Chapter 8 of this title currently in effect. If such tax is not currently in effect, such proceeds shall be distributed to such board or boards of education in the same manner as if such tax were in effect;

(ii)(I) Except as otherwise provided in this division, an amount equal to one-third of such proceeds shall be distributed to the governing authority of the county and the governing authority of each qualified municipality located in such county in the same manner as specified under the distribution certificate for the joint county and municipal sales and use tax under Article 2 of Chapter 8 of this title currently in effect.

(II) If such tax were never in effect, such proceeds shall be distributed to the governing authority of the county and the governing authority of each qualified municipality located in such county on a pro rata basis according to the ratio of the population that each such municipality bears to the population of the entire county.

(III) If such tax is currently in effect as well as a local option sales and use tax for educational purposes levied pursuant to a local constitutional amendment, an amount equal to one-third of such proceeds shall be distributed in the same manner as required under subdivision (I) of this division and an amount equal to one-third of such proceeds shall be distributed to the board of education of the county school district.

(IV) If such tax is not currently in effect and a local option sales and use tax for educational purposes levied pursuant to a local constitutional amendment is currently in effect, such proceeds shall be distributed to the board of education of the county school district and the board of education of any independent school district in the same manner as required under that local constitutional amendment.

(V) If such tax is not currently in effect and a homestead option sales and use tax under Article 2A of Chapter 8 of this title is in effect, such proceeds shall be distributed to the governing authority of the county, each qualified municipality, and each existing municipality in the same proportion as otherwise required under Code Section 48-8-104; and

(iii)(I) An amount equal to one-third of such proceeds shall be distributed to the governing authority of the county and the governing authority of each qualified municipality located in such county in the same manner as specified under an intergovernmental agreement or as otherwise required under the county special purpose local option sales and use tax under Part 1 of Article 3 of Chapter 8 of this title currently in effect; provided, however, that this subdivision shall not apply if subdivision (III) of division (ii) of this subparagraph is applicable.

(II) If such tax were in effect but expired and is not currently in effect, such proceeds shall be distributed to the governing authority of the county and the governing authority of each qualified municipality located in such county in the same manner as if such tax were still in effect according to the intergovernmental agreement or as otherwise required under the county special purpose local sales and use tax under Part 1 of Article 3 of Chapter 8 of this title for the 12 month period commencing at the expiration of such tax. If such tax is not renewed prior to the expiration of such 12 month period, such amount shall be distributed in accordance with subdivision (I) of division (ii) of this subparagraph; provided, however, that if a tax under Article 2 of Chapter 8 of this title is not in effect, such amount shall be distributed in accordance with subdivision (II) of division (ii) of this subparagraph.

(III) (For effective date, see note.) If such tax is not currently in effect in a county in which a tax is levied for purposes of a metropolitan area system of public transportation, as authorized by the amendment to the Constitution set out at Ga. L. 1964, p. 1008; the continuation of such amendment under Article XI, Section I, Paragraph IV(d) of the Constitution; and the laws enacted pursuant to such constitutional amendment, such proceeds shall be distributed in such county, in the same manner as ad valorem tax on motor vehicles collected under Chapter 5 of this title in the taxing jurisdiction of each governing authority and school district from the amount of ad valorem taxes on motor vehicles collected under Chapter 5 of this title in each such governing authority and school district during the same calendar month of 2012.

(IV) If such tax were never in effect, such proceeds shall be distributed in the same manner as specified under the distribution certificate for the joint county and municipal sales and use tax under Article 2 of Chapter 8 of this title currently in effect; provided, however, that if such tax under such article is not in effect, such proceeds shall be distributed to the governing authority of the county and the governing authority of each qualified municipality located in such county on a pro rata basis according to the ratio of the population that each such municipality bears to the population of the entire county.

(d)(1)(A) Upon the death of an owner of a motor vehicle which has not become subject to paragraph (1) of subsection (b) of this Code section, the immediate family member or immediate family members of such owner who receive such motor vehicle pursuant to a will or under the rules of inheritance shall, subsequent to the transfer of title of such motor vehicle, continue to be subject to ad valorem tax under Chapter 5 of this title and shall not be subject to the state and local title ad valorem tax fees provided for in paragraph (1) of subsection (b) of this Code section unless the immediate family member or immediate family members make an affirmative written election to become subject to paragraph (1) of subsection (b) of this Code section. In the event of such election, such transfer shall be subject to the state and local title ad valorem tax fees provided for in paragraph (1) of subsection (b) of this Code section.

(B) Upon the death of an owner of a motor vehicle which has become subject to paragraph (1) of subsection (b) of this Code section, the immediate family member or immediate family members of such owner who receive such motor vehicle pursuant to a will or under the rules of inheritance shall be subject to a state title ad valorem tax fee in an amount equal to one-quarter of 1 percent of the fair market value of the motor vehicle and a local title ad valorem tax fee in an amount equal to one-quarter of 1 percent of the fair market value of the motor vehicle. Such title ad valorem tax fees shall be an alternative ad valorem tax as authorized by Article VII, Section I, Paragraph III(b)(3) of the Georgia Constitution.

(2)(A) Upon the transfer from an immediate family member of a motor vehicle which has not become subject to paragraph (1) of subsection (b) of this Code section, the immediate family member or immediate family members who receive such motor vehicle shall, subsequent to the transfer of title of such motor vehicle, continue to be subject to ad valorem tax under Chapter 5 of this title and shall not be subject to the state and local title ad valorem

tax fees provided for in paragraph (1) of subsection (b) of this Code section unless the immediate family member or immediate family members make an affirmative written election to become subject to paragraph (1) of subsection (b) of this Code section. In the event of such election, such transfer shall be subject to the state and local title ad valorem tax fees provided for in paragraph (1) of subsection (b) of this Code section.

(B) Upon the transfer from an immediate family member of a motor vehicle which has become subject to paragraph (1) of subsection (b) of this Code section, the immediate family member who receives such motor vehicle shall transfer title of such motor vehicle to such recipient family member and shall be subject to a state title ad valorem tax fee in an amount equal to one-quarter of 1 percent of the fair market value of the motor vehicle and a local title ad valorem tax fee in an amount equal to one-quarter of 1 percent of the fair market value of the motor vehicle. Such title ad valorem tax fees shall be an alternative ad valorem tax as authorized by Article VII, Section I, Paragraph III(b)(3) of the Georgia Constitution.

(C) Any title transfer under this paragraph shall be accompanied by an affidavit of the transferor and transferee that such persons are immediate family members to one another. There shall be a penalty imposed on any person who, in the determination of the state revenue commissioner, falsifies any material information in such affidavit. Such penalty shall not exceed $2,500.00 as a state penalty and shall not exceed $2,500.00 as a local penalty as determined by the state revenue commissioner. Such determination shall be made within 60 days of the state revenue commissioner receiving information of a possible violation of this paragraph.

(3) Any individual who:

(A) Is required by law to register a motor vehicle or motor vehicles in this state which were registered in the state in which such person formerly resided; and

(B) Is required to file an application for a certificate of title under Code Section 40-3-21 or 40-3-32

shall only be required to pay state and local title ad valorem tax fees in the amount of 50 percent of the amount which would otherwise be due and payable under this subsection at the time of filing the application for a certificate of title, and the remaining 50 percent shall be paid within 12 months.

(4) The state and local title ad valorem tax fees provided for under this Code section shall not apply to corrected titles, replacement titles

under Code Section 40-3-31, or titles reissued to the same owner pursuant to Code Sections 40-3-50 through 40-3-56.

(5) Any motor vehicle subject to state and local title ad valorem tax fees under paragraph (1) of subsection (b) of this Code section shall continue to be subject to the title, license plate, revalidation decal, and registration requirements and applicable fees as otherwise provided in Title 40 in the same manner as motor vehicles which are not subject to state and local title ad valorem tax fees under paragraph (1) of subsection (b) of this Code section.

(6) Motor vehicles owned or leased by or to the state or any county, consolidated government, municipality, county or independent school district, or other government entity in this state shall not be subject to the state and local title ad valorem tax fees provided for under paragraph (1) of subsection (b) of this Code section; provided, however, that such other government entity shall not qualify for the exclusion under this paragraph unless it is exempt from ad valorem tax and sales and use tax pursuant to general law.

(7)(A) Any motor vehicle which is exempt from sales and use tax pursuant to paragraph (30) of Code Section 48-8-3 shall be exempt from state and local title ad valorem tax fees under this subsection.

(B) Any motor vehicle which is exempt from ad valorem taxation pursuant to Code Section 48-5-478, 48-5-478.1, 48-5-478.2, or 48-5-478.3 shall be exempt from state and local title ad valorem tax fees under paragraph (1) of subsection (b) of this Code section.

(8) There shall be a penalty imposed on the transfer of all or any part of the interest in a business entity that includes primarily as an asset of such business entity one or more motor vehicles, when, in the determination of the state revenue commissioner, such transfer is done to evade the payment of state and local title ad valorem tax fees under this subsection. Such penalty shall not exceed $2,500.00 as a state penalty per motor vehicle and shall not exceed $2,500.00 as a local penalty per motor vehicle, as determined by the state revenue commissioner, plus the amount of the state and local title ad valorem tax fees. Such determination shall be made within 60 days of the state revenue commissioner receiving information that a transfer may be in violation of this paragraph.

(9) Any owner of any motor vehicle who fails to submit within 30 days of the date such owner is required by law to register such vehicle in this state an application for a first certificate of title under Code Section 40-3-21 or a certificate of title under Code Section 40-3-32 shall be required to pay a penalty in the amount of 10 percent of the state title ad valorem tax fees and 10 percent of the local title ad valorem tax fees required under this Code section and, if such state

and local title ad valorem tax fees and the penalty are not paid within 60 days following the date such owner is required by law to register such vehicle, interest at the rate of 1.0 percent per month shall be imposed on the state and local title ad valorem tax fees due under this Code section, unless a temporary permit has been issued by the tax commissioner. The tax commissioner shall grant a temporary permit in the event the failure to timely apply for a first certificate of title is due to the failure of a lienholder to comply with Code Section 40-3-56, regarding release of a security interest or lien, and no penalty or interest shall be assessed. Such penalty and interest shall be in addition to the penalty and fee required under Code Section 40-3-21 or 40-3-32, as applicable.

(10) The owner of any motor vehicle for which a title was issued in this state on or after January 1, 2012, and prior to March 1, 2013, shall be authorized to opt in to the provisions of this subsection at any time prior to February 28, 2014, upon compliance with the following requirements:

(A)(i) The total amount of Georgia state and local title ad valorem tax fees which would be due from March 1, 2013, to December 31, 2013, if such vehicle had been titled in 2013 shall be determined; and

(ii) The total amount of Georgia state and local sales and use tax and Georgia state and local ad valorem tax under Chapter 5 of this title which were due and paid in 2012 for that motor vehicle and, if applicable, the total amount of such taxes which were due and paid for that motor vehicle in 2013 and 2014 shall be determined; and

(B)(i) If the amount derived under division (i) of subparagraph (A) of this paragraph is greater than the amount derived under division (ii) of subparagraph (A) of this paragraph, the owner shall remit the difference to the tag agent. Such remittance shall be deemed local title ad valorem tax fee proceeds; or

(ii) If the amount derived under division (i) of subparagraph (A) of this paragraph is less than the amount derived under division (ii) of subparagraph (A) of this paragraph, no additional amount shall be due and payable by the owner.

Upon certification by the tag agent of compliance with the requirements of this paragraph, such motor vehicle shall not be subject to ad valorem tax as otherwise required under Chapter 5 of this title in the same manner as otherwise provided in paragraph (1) of subsection (b) of this Code section.

(11)(A) In the case of rental motor vehicles owned by a rental motor vehicle concern, the state title ad valorem tax fee shall be in

an amount equal to .625 percent of the fair market value of the motor vehicle, and the local title ad valorem tax fee shall be in an amount equal to .625 percent of the fair market value of the motor vehicle, but only if in the immediately prior calendar year the average amount of sales and use tax attributable to the rental charge of each such rental motor vehicle was at least $400.00 as certified by the state revenue commissioner. If, in the immediately prior calendar year, the average amount of sales and use tax attributable to the rental charge of each such rental motor vehicle was not at least $400.00, this paragraph shall not apply and such vehicles shall be subject to the state and local title ad valorem tax fees prescribed in division (b)(1)(B)(ii) of this Code section.

(B) Such title ad valorem tax fees shall be an alternative ad valorem tax as authorized by Article VII, Section I, Paragraph III(b)(3) of the Georgia Constitution.

(12) A loaner vehicle shall not be subject to state and local title ad valorem tax fees under paragraph (1) of subsection (b) of this Code section for a period of time not to exceed 366 days commencing on the date such loaner vehicle is withdrawn temporarily from inventory. Immediately upon the expiration of such 366 day period, if the dealer does not return the loaner vehicle to inventory for resale, the dealer shall be responsible for remitting state and local title ad valorem tax fees in the same manner as otherwise required of an owner under paragraph (9) of this subsection and shall be subject to the same penalties and interest as an owner for noncompliance with the requirements of paragraph (9) of this subsection.

(13) Any motor vehicle which is donated to a nonprofit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code for the purpose of being transferred to another person shall, when titled in the name of such nonprofit organization, not be subject to state and local title ad valorem tax fees under paragraph (1) of subsection (b) of this Code section but shall be subject to state and local title ad valorem tax fees otherwise applicable to salvage titles under paragraph (2) of subsection (b) of this Code section.

(14)(A) A lessor of motor vehicles that leases motor vehicles for more than 31 consecutive days to lessees residing in this state shall register with the department. The department shall collect an annual fee of $100.00 for such registrations. Failure of a lessor to register under this subparagraph shall subject such lessor to a civil penalty of $2,500.00.

(B) A lessee residing in this state who leases a motor vehicle under this paragraph shall register such motor vehicle with the tag agent in such lessee's county of residence within 30 days of the

commencement of the lease of such motor vehicle or beginning residence in this state, whichever is later.

(C) A lessor that leases a motor vehicle under this paragraph to a lessee residing in this state shall apply for a certificate of title in this state within 30 days of the commencement of the lease of such motor vehicle.

(15) There shall be no liability for any state or local title ad valorem tax fees in any of the following title transactions:

(A) The addition or substitution of lienholders on a motor vehicle title so long as the owner of the motor vehicle remains the same;

(B) The acquisition of a bonded title by a person or entity pursuant to Code Section 40-3-28 if the title is to be issued in the name of such person or entity;

(C) The acquisition of a title to a motor vehicle by a person or entity as a result of the foreclosure of a mechanic's lien pursuant to Code Section 40-3-54 if such title is to be issued in the name of such lienholder;

(D) The acquisition of a title to an abandoned motor vehicle by a person or entity pursuant to Chapter 11 of Title 40 if such person or entity is a manufacturer or dealer of motor vehicles and the title is to be issued in the name of such person or entity;

(E) The obtaining of a title to a stolen motor vehicle by a person or entity pursuant to Code Section 40-3-43;

(F) The obtaining of a title by and in the name of a motor vehicle manufacturer, licensed distributor, licensed dealer, or licensed rebuilder for the purpose of sale or resale or to obtain a corrected title, provided that the manufacturer, distributor, dealer, or rebuilder shall submit an affidavit in a form promulgated by the commissioner attesting that the transfer of title is for the purpose of accomplishing a sale or resale or to correct a title only;

(G) The obtaining of a title by and in the name of the holder of a security interest when a motor vehicle has been repossessed after default in accordance with Part 6 of Article 9 of Title 11 if such title is to be issued in the name of such security interest holder;

(H) The obtaining of a title by a person or entity for purposes of correcting a title, changing an odometer reading, or removing an odometer discrepancy legend, provided that, subject to subparagraph (F) of this paragraph, title is not being transferred to another person or entity; and

(I) The obtaining of a title by a person who pays state and local title ad valorem tax fees on a motor vehicle and subsequently

moves out of this state but returns and applies to retitle such vehicle in this state.

(16) It shall be unlawful for a person to fail to obtain a title for and register a motor vehicle in accordance with the provisions of this chapter. Any person who knowingly and willfully fails to obtain a title for or register a motor vehicle in accordance with the provisions of this chapter shall be guilty of a misdemeanor.

(17) Any person who purchases a 1963 through 1985 model year motor vehicle for which such person obtains a title shall be subject to this Code section, but the state title ad valorem tax fee shall be in an amount equal to .50 percent of the fair market value of such motor vehicle, and the local title ad valorem tax fee shall be in an amount equal to .50 percent of the fair market value of such motor vehicle.

(e) The fair market value of any motor vehicle subject to this Code section shall be appealable in the same manner as otherwise authorized for a motor vehicle subject to ad valorem taxation under Code Section 48-5-450; provided, however, that the person appealing the fair market value shall first pay the full amount of the state and local title ad valorem tax prior to filing any appeal. If the appeal is successful, the amount of the tax owed shall be recalculated and, if the amount paid by the person appealing the determination of fair market value is greater than the recalculated tax owed, the person shall be promptly given a refund of the difference.

(f) Beginning in 2014, on or before January 31 of each year, the department shall provide a report to the chairpersons of the House Committee on Ways and Means and the Senate Finance Committee showing the state and local title ad valorem tax fee revenues collected pursuant to this chapter and the motor vehicle ad valorem tax proceeds collected pursuant to Chapter 5 of this title during the preceding calendar year. (Code 1981, § 48-5C-1, enacted by Ga. L. 2012, p. 257, § 1-4/HB 386; Ga. L. 2013, p. 7, § 2/HB 266; Ga. L. 2013, p. 32, § 4/HB 463; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2015, p. 5, § 48/HB 90; Ga. L. 2015, p. 1219, § 23/HB 202.)

Delayed effective date. — Subparagraph (c)(3)(A) and subdivision (c)(3)(B)(iii)(III), as set out above, become effective January 1, 2016. For versions of subparagraph (c)(3)(A) and subdivision (c)(3)(B)(iii)(III) in effect until January 1, 2016, see the 2015 amendment note.

The 2013 amendments. — The first 2013 amendment, effective March 5, 2013, rewrote this Code section. The second 2013 amendment, effective April 10, 2013, substituted "wholesale market" for "wholesale mark" in subparagraph (a)(1)(A), deleted "or" at the end of subparagraph (a)(1)(B), added subparagraph (a)(1)(C), and redesignated former subparagraph (a)(1)(C) as present subparagraph (a)(1)(D). See editor's note for applicability. The third 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, substituted "of this title" for "of Title 48" throughout this Code section; substituted "paragraph (95)" for "paragraph (92)" in

subparagraph (b)(1)(A); and substituted "ten days" for "10 days" in subparagraph (b)(1)(E). See editor's note for applicability.

The 2015 amendments. — The first 2015 amendment, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, substituted "Title 40" for "this title" in subparagraph (d)(15)(D). The second 2015 amendment, effective January 1, 2016, substituted the present provisions of subparagraph (c)(3)(A) for the former provisions, which read: "The tag agent of the county shall within 20 days following the end of each calendar month allocate and distribute to the county governing authority and to municipal governing authorities, the board of education of the county school district, and the board of education of any independent school district located in such county an amount of those proceeds necessary to offset any reduction in ad valorem tax on motor vehicles collected under Chapter 5 of this title in the taxing jurisdiction of each governing authority and school district from the amount of ad valorem taxes on motor vehicles collected under Chapter 5 of this title in each such governing authority and school district during the same calendar month of 2012. This reduction shall be calculated by subtracting the amount of ad valorem tax on motor vehicles collected under Chapter 5 of this title in each such taxing jurisdiction from the amount of ad valorem tax on motor vehicles collected under Chapter 5 of this title in that taxing jurisdiction in the same calendar month of 2012. In the event that the local title ad valorem tax fee proceeds are insufficient to fully offset such reduction in ad valorem taxes on motor vehicles, the tag agent shall allocate a proportionate amount of the proceeds to each governing authority and to the board of education of each such school district, and any remaining shortfall shall be paid from the following month's local title ad valorem tax fee proceeds. In the event that a shortfall remains, the tag agent shall continue to first allocate local title ad valorem tax fee proceeds to offset such shortfalls until the shortfall has been fully repaid; and"; and, in subdivision (c)(3)(B)(iii)(III), substituted "distributed in such county, in the same manner as ad valorem tax on motor vehicles collected under Chapter 5 of this title in the taxing jurisdiction of each governing authority and school district from the amount of ad valorem taxes on motor vehicles collected under Chapter 5 of this title in each such governing authority and school district during the same calendar month of 2012" for "distributed to the governing body of the authority created by local Act to operate such metropolitan area system of public transportation" at the end.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2012, the first occurrence of subdivision (b)(1)(B)(i)(II) was redesignated as subdivision (b)(1)(B)(i)(I).

Pursuant to Code Section 28-9-5, in 2015, "of" was inserted preceding "subparagraph (A)" in subdivision (d)(10)(B)(i).

Editor's notes. — Ga. L. 2013, p. 32, § 5/HB 463, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be immediately applied to relevant fair market value determinations. The Governor approved this Act on April 10, 2013.

Ga. L. 2013, p. 141, § 54(f)/HB 79, not codified by the General Assembly, provides that: "In the event of a conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2013 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict."

CHAPTER 6

TAXATION OF INTANGIBLES

Article 1

Real Estate Transfer Tax

Article 3

Intangible Recording Tax

ARTICLE 1

REAL ESTATE TRANSFER TAX

48-6-1. Transfer tax rate.

JUDICIAL DECISIONS

Nature of tax.

Because Georgia's ad valorem taxation scheme is contained in its own chapter, entirely separate from the chapter that describes the real estate transfer tax, the definition of taxable property in O.C.G.A. § 48-5-3 did not support an argument regarding the nature of the transfer tax in O.C.G.A. § 48-6-1 et seq. Athens-Clarke County Unified Gov't v. Fed. Hous. Fin. Agency, No. 5:12-CV-355 (MTT), 2013 U.S. Dist. LEXIS 68225 (M.D. Ga. May 14, 2013).

Federal mortgage companies exempt. — Exemptions from state taxation in 12 U.S.C. §§ 1452(e), 1723a(c)(2), and 4617(j)(2) apply to specific entities, not property, and include excise taxes; thus, imposition of Georgia's real estate transfer tax, O.C.G.A. § 48-6-1 et seq., on these federal mortgage companies' real estate transactions in Georgia was precluded. Athens-Clarke County Unified Gov't v. Fed. Hous. Fin. Agency, No. 5:12-CV-355 (MTT), 2013 U.S. Dist. LEXIS 68225 (M.D. Ga. May 14, 2013).

Exemption of Fannie Mae, Freddie Mac, and the Federal Housing Finance Agency from "all taxation" applies to Georgia's real estate transfer tax and the exception allowing taxation of real property does not extend to transfer taxes, which are excise taxes and not taxes imposed on the property itself. Montgomery County Comm'n v. Fed. Hous. Fin. Agency, 776 F.3d 1247 (11th Cir. 2015).

48-6-2. (For effective date, see note.) Exemption of certain instruments, deeds, or writings from real estate transfer tax; requirement that consideration be shown.

(a) The tax imposed by Code Section 48-6-1 shall not apply to:

(1) Any instrument or writing given to secure a debt;

(2) Any deed of gift;

(3) Any deed, instrument, or other writing to which any of the following is a party: the United States; this state; any agency, board, commission, department, or political subdivision of either the United States or this state; any public authority; or any nonprofit public corporation;

(4) Any lease of lands, tenements, standing timber, or other realty or any lease of any estate, interest, or usufruct in any lands, tenements, standing timber, or other realty;

(5) Any transfer of real estate between a husband and wife in connection with a divorce case;

(6) Any order for year's support awarding an interest in real property as provided in former Code Section 53-5-11 as such existed on December 31, 1997, if applicable, or Code Section 53-3-11;

(7) Any deed issued in lieu of foreclosure if the deed issued in lieu of foreclosure is for a purchase money deed to secure debt that has been in existence and properly executed and recorded for a period of 12 months prior to the recording of the deed in lieu of foreclosure;

(7.1) The deed from the debtor to the first transferee at a foreclosure sale;

(8) Transfer of property which is acquired as provided in Code Sections 32-3-2 and 32-3-3;

(8.1) Any deed that seeks to return any property sold at a tax sale back to the defendant in fi. fa.;

(9) Any deed of assent or distribution by an executor, administrator, guardian, trustee, or custodian; any deed or other instrument carrying out the exercise of a power of appointment; and any other instrument transferring real estate to or from a fiduciary; provided, however, that the exemption provided under this paragraph shall apply only if the transfer is without valuable consideration;

(10) Any deed, instrument, or other writing which effects a division of real property among joint tenants or tenants in common if the transaction does not involve any consideration other than the division of the property; and

(11)(A) Any deed, instrument, or other writing through which real property is transferred from one or more individual owners to a corporation, partnership, or other entity if the individual owner or owners of the real property also have a majority ownership interest in the corporation, partnership, or other entity to which the property is transferred; or

(B) Any deed, instrument, or other writing through which real property is transferred from a corporation, partnership, or other entity to one or more individuals if the individual or individuals to whom the property is transferred also have a majority ownership interest in the corporation, partnership, or other entity by which the property is transferred.

(b) (For effective date, see note.) In order to exercise any exemption provided in this Code section, the total consideration of the transfer for real and personal property conveyed shall be shown on the form prescribed in subsection (c) of Code Section 48-6-4. (Ga. L. 1967, p. 788, § 3; Ga. L. 1968, p. 1102, § 1; Ga. L. 1969, p. 109, § 1; Ga. L. 1975, p. 782, § 1; Ga. L. 1976, p. 1059, § 3; Ga. L. 1977, p. 680, § 1; Code 1933, § 91A-3003, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 52A; Ga. L. 1980, p. 491, § 2; Ga. L. 1984, p. 936, § 1; Ga. L. 1991, p. 965, § 1; Ga. L. 1996, p. 736, § 1; Ga. L. 1998, p. 128, § 48; Ga. L. 2003, p. 874, § 1; Ga. L. 2006, p. 770, § 7/SB 585; Ga. L. 2011, p. 752, § 48/HB 142; Ga. L. 2015, p. 1219, § 24/HB 202.)

Delayed effective date. — Subsection (b), as set out above, becomes effective January 1, 2016. For version of subsection (b) in effect until January 1, 2016, see the 2015 amendment note.

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted "former Code Section 53-5-11 as such existed on December 31, 1997, if applicable, or Code Section 53-3-11" for "Code Section 53-5-11 of the 'Pre-1998 Probate Code,' if applicable, or Code Section 53-3-11 of the 'Revised Probate Code of 1998'" in paragraph (a)(6).

The 2015 amendment, effective January 1, 2016, substituted "for real and personal property conveyed shall be shown on the form prescribed in subsection (c) of Code Section 48-6-4" for "shall be shown" at the end of subsection (b).

48-6-4. (For effective date, see note.) Payment of tax prerequisite to filing deed, instrument, or other writing; certification of payment; recording certification with deed.

(a) (For effective date, see note.) It is the intent of the General Assembly that the tax imposed by this article be paid to the clerk of the superior court or his or her deputy, and that the actual consideration of real and personal property conveyed shall be shown separately on the form prescribed in subsection (c) of this Code section, prior to and as a prerequisite to the filing for record of any deed, instrument, or other writing described in Code Section 48-6-1.

(b) (For effective date, see note.) No deed, instrument, or other writing described in Code Section 48-6-1 shall be filed for record or recorded in the office of the clerk of the superior court or filed for record or recorded in or on any other official record of this state or of any county until the tax imposed by this article has been paid and until the actual consideration of real and personal property conveyed has been shown separately on the form prescribed in subsection (c) of this Code section; provided, however, that any such deed, instrument, or other writing filed or recorded which would otherwise constitute constructive notice shall constitute such notice whether or not such tax was in fact paid.

(c) (For effective date, see note.) The amount of tax to be paid on a deed, instrument, or other writing shall be determined on the basis of written disclosure of the actual consideration of the interest in the property granted, assigned, transferred, or otherwise conveyed. The disclosure of the amount of tax and the actual consideration shall be made on a form or in electronic format prescribed by the commissioner and provided by the clerk of the superior court. By the fifteenth day of the month following the month the deed, instrument, or other writing is recorded, a physical or electronic copy of each disclosure shall be forwarded or made available electronically to the state auditor and to the tax commissioner and the board of tax assessors in the county where the deed, instrument, or other writing is recorded.

(d) Upon payment of the correct amount of tax, the clerk of the superior court or his or her deputy shall enter upon or attach to the deed, instrument, or other writing a certification of the fact that the tax as imposed by this article has been paid, the date, and the amount of the tax. The certification shall be signed by the clerk or deputy clerk receiving the tax. The certification may also be attested to electronically by the clerk or deputy clerk in such manner as may be prescribed by the commissioner.

(e) The certificate entered upon or attached physically or electronically to the deed, instrument, or other writing shall be recorded with the deed, instrument, or other writing and shall be in the physical or electronic form required by the commissioner. In each case, however, the certificate shall bear the signature of the clerk or his or her deputy. The certificate may be relied upon by subsequent purchasers or lenders as evidence that the proper tax has been paid. In the event any deed, instrument, or other writing upon which tax is imposed by this article is required to be recorded in more than one county, the required tax shall be prorated among all applicable counties and the amount paid to the clerk or his or her deputy of the county in which the deed, instrument, or other writing is recorded shall be that proportion of the total tax due calculated by applying the ratio of the value of the real

property in such county as it bears to the total value of the real properties in all counties described in the deed, instrument, or other writing to the total tax due. Such proportions shall be calculated pursuant to the most recently determined fair market valuations of the property as determined by the county board of tax assessors. All such values shall be disclosed on the face of the deed, instrument, or other writing or, alternatively, may be submitted in the form of an affidavit by the holder presenting the deed, instrument, or other writing for recording. The original or a duplicate original executed copy or counterpart of such deed, instrument, or other writing shall be presented for recording in all counties in which the real property is located, and the clerk or the clerk's deputy of each county may rely upon the sworn original or a duplicate original certification of values in determining the amount of tax due and payable in that county and collect such portion of the tax imposed by Code Section 48-6-1 and enter the same upon the deed, instrument, or other writing. (Ga. L. 1967, p. 788, § 5; Ga. L. 1971, p. 266, § 3; Code 1933, § 91A-3005, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 725, § 1; Ga. L. 1990, p. 1843, § 1; Ga. L. 2003, p. 874, § 2; Ga. L. 2010, p. 526, § 1/HB 1192; Ga. L. 2015, p. 1219, § 25/HB 202.)

Delayed effective date. — Subsections (a), (b), and (c), as set out above, become effective January 1, 2016. For versions of subsections (a), (b), and (c) in effect until January 1, 2016, see the 2015 amendment note.

The 2015 amendment, effective January 1, 2016, in subsection (a), inserted ", and that the actual consideration of real and personal property conveyed shall be shown separately on the form prescribed in subsection (c) of this Code section," in the middle; in subsection (b), inserted "and until the actual consideration of real and personal property conveyed has been shown separately on the form prescribed in subsection (c) of this Code section" in the middle; and, in subsection (c), substituted "actual consideration of the interest" for "consideration or value of the interest" in the first sentence, and inserted "of the amount of tax and the actual consideration" near the beginning of the second sentence.

Law reviews. — For annual survey of law on real property, see 62 Mercer L. Rev. 283 (2010).

48-6-7. Refund of erroneously or illegally collected tax; procedure for filing claim; action for refund in superior court upon denial of claim; manner of paying refund.

(a) In any case in which the clerk of superior court erroneously or illegally collects the tax imposed by this article and remits the tax to the commissioner, the taxpayer from whom the tax was collected may file a claim for refund with the commissioner at any time within one year after the date of collection. Each claim for refund shall be made in writing and shall be accompanied by evidence supporting the claim that the collection was erroneous or illegal. The commissioner or his delegate shall consider the information contained in the taxpayer's claim

for refund and other available information, shall approve or disapprove the claim, and shall notify the taxpayer of the decision.

(b)(1) A taxpayer whose claim for a refund is denied by the commissioner or the commissioner's delegate or with respect to whose claim no decision is rendered by the commissioner or the commissioner's delegate within one year from the date of filing the claim shall have the right to bring an action for a refund in the superior court of the county where the disputed tax was originally collected or in the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50. The taxpayer shall bring the action for refund against the clerk of superior court of the county which collected the disputed tax. The commissioner in the commissioner's official capacity shall be made a party defendant to the action in order that the interests of the state may be represented in the action. The Attorney General shall represent both defendants in the action. If it is determined in the action that an amount claimed by the taxpayer was erroneously or illegally collected, the taxpayer shall be entitled to judgment against the defendant clerk of the superior court in the clerk's official capacity for the amount erroneously or illegally collected, without interest to the date of judgment.

(2) No action for refund shall be brought after the expiration of 60 days from the date of denial of the taxpayer's claim for refund by the commissioner.

(3) For the purposes of this Code section, a failure by the commissioner to grant or deny the taxpayer's claim for refund within the one-year period shall constitute a constructive denial of the claim.

(c) If a claim for refund is allowed by the commissioner as provided in subsection (a) of this Code section or if the taxpayer obtains a final judgment as provided in subsection (b) of this Code section, the commissioner shall refund the amount erroneously or illegally collected from funds remitted by the clerk of superior court who collected the tax. The refund shall be paid and charged in the same proportion that the disputed tax was originally distributed by the commissioner as provided in this article. (Ga. L. 1971, p. 266, § 4; Code 1933, § 91A-3007, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2012, p. 318, § 8/HB 100.)

The 2012 amendment, effective January 1, 2013, designated the existing provisions of subsection (b) as paragraph (b)(1); in paragraph (b)(1), substituted "the commissioner's" for "his" in the first and third sentences, added "or in the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50" at the end of the first sentence, and substituted "the clerk's" for "his" in the last sentence; and added paragraphs (b)(2) and (b)(3). See editor's note for applicability.

Editor's notes. — Ga. L. 2012, p. 318, § 16(b)/HB 100, not codified by the General Assembly, provides, in part, that: "Sections 1 through 14 of this Act shall become effective on January 1, 2013, provided that cases pending on January 1,

2013, shall continue to be governed by the law in effect on December 31, 2012, until the conclusion of the case."

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U.L. Rev. 70 (2012).

ARTICLE 3

INTANGIBLE RECORDING TAX

48-6-60. Definitions.

Law reviews. — For comment, "If It Quacks Like a Duck: In Light of Today's Financial Environment, Should Credit Unions Continue to Enjoy Tax Exemptions?," see 28 Ga. St. U.L. Rev. 1367 (2012).

48-6-68. Bond for title in absence of security deed; recording and tax.

JUDICIAL DECISIONS

Impact of bankruptcy. — With respect to a mobile home the debtor purchased through an installment note, because the transaction was akin to a bond for title under Georgia law, giving the debtor possessory interest and equitable interest in the property, and the debtor's interests were not foreclosed by legal proceeding prepetition, those interests became part of the bankruptcy estate subject to an automatic stay. In re Guyton, 518 B.R. 681 (Bankr. S.D. Ga. 2014).

48-6-73. Reports and distributions by collecting officer; failure to distribute as breach of duty and bond; commissions; long-term notes not entered on property tax digest.

Each collecting officer shall make a report to the commissioner by the tenth day of each month on forms prescribed by the commissioner of all sums collected and remitted under this article for the preceding month. The collecting officer shall retain 6 percent of the tax collected as compensation for said officer's services in collecting the tax. All such taxes shall be deemed to have been collected by the collecting officer in said officer's official capacity. Failure to collect and distribute the tax as provided by law shall constitute a breach of the official duty and of the official bond of the collecting officer. In each county in which the collecting officer is on a salary, the 6 percent commission allowed by this Code section shall be paid into the county treasury and shall become county property. The long-term notes secured by real property upon which this tax is based shall not be placed upon the property tax digest prepared and maintained by the tax receiver. It is the intention of the General Assembly that the 6 percent commission permitted under this article for the collection and distribution of this tax by the collecting officer shall be the only compensation permitted to any collecting officer with respect to this tax. (Ga. L. 1953, Nov.-Dec. Sess., p. 379, § 8; Ga. L. 1955, p. 288, § 3; Code 1933, § 91A-3206, enacted by Ga. L. 1978, p.

309, § 2; Ga. L. 1990, p. 1843, § 4; Ga. L. 1992, p. 1686, § 1; Ga. L. 1994, p. 1767, § 6; Ga. L. 2000, p. 1376, § 1; Ga. L. 2002, p. 1294, § 1; Ga. L. 2012, p. 738, § 1/HB 851.)

The 2012 amendment, effective May 1, 2012, deleted the former last sentence in this Code section, which read: "In counties having a population of more than 650,000, according to the United States decennial census of 2000 or any future such census, however, the commission allowed under this article as compensation to the collecting officer shall be 4 percent."

48-6-76. Procedure for protesting intangible recording tax; payment under protest; special escrow fund; filing claim; approval or denial by commissioner; action for refund.

(a) If a taxpayer files with the collecting officer at the time of payment of tax as provided in Code Section 48-6-61 a written protest in duplicate of the collection or any part of the collection of the tax as erroneous or illegal, the collecting officer receiving the payment under written protest shall be deemed to have made a conditional collection of the protested amount of the payment. Each protested collection shall be effective to discharge any duty of the taxpayer to pay the tax and to require the collecting officer to enter upon or attach to the instrument securing the obligation upon which the tax is claimed to be due a certification in the form prescribed in Code Section 48-6-62 of the fact that the intangible recording tax as provided by Code Section 48-6-61 has been paid. Each collection as provided in this Code section shall be subject to the conditions set forth in this article as to refund upon determination by the commissioner or by final judgment in a refund action that the collection was erroneous or illegal.

(b) A collecting officer receiving a payment under written protest shall deposit the protested amount of the payment in a separate account in a bank approved as a depository for state funds, shall hold the protested amount as a special escrow fund for the purposes provided in this article, and, except as provided in this Code section, shall not distribute the amount under Code Section 48-6-74 or retain from the amount or pay into the county treasury any commission under Code Section 48-6-73. Immediately upon receiving a payment under written protest, the collecting officer shall forward to the commissioner one executed copy of the protest.

(c) The taxpayer making a payment under written protest may file at any time within 30 days after the date of the payment a claim for refund of the protested amount of the payment with the commissioner. Each claim shall be in writing, shall be in the form and contain such information as the commissioner requires, and shall include a summary statement of the grounds upon which the taxpayer relies in contending that the collection of the amount was erroneous or illegal. A copy of the

claim shall be filed by the taxpayer within the 30 day period with the collecting officer or said officer's successor who collected the protested amount.

(d) The commissioner shall consider the claim for refund and shall approve or deny it and shall notify the taxpayer and the collecting officer or said officer's successor who collected the protested amount of said officer's action. If the commissioner approves the claim in whole or in part, the collecting officer or said officer's successor shall forthwith pay to the taxpayer the amount so approved, without interest, from the special escrow fund held by said officer, and no appropriation or further authorization shall be necessary to authorize and require the payment to the taxpayer from the special escrow fund.

(e)(1) Any taxpayer whose claim for refund is denied entirely or in part by the commissioner or with respect to whose claim no decision is rendered by the commissioner within 30 days from the date of filing the claim shall have the right to bring an action for refund of the amount so claimed and not approved against the collecting officer or said officer's successor who collected the amount, in said officer's official capacity, in the superior court of the county whose official collected the amount or in the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50.

(2) No action for refund shall be brought after the expiration of 60 days from the date of denial of the taxpayer's claim for refund by the commissioner.

(3) For the purposes of this Code section, a failure by the commissioner to grant or deny the taxpayer's claim for refund within the 30 day period shall not constitute a constructive denial of the claim.

(f) The commissioner in said commissioner's official capacity shall be made a party defendant to each action for refund in order that the interests of the state may be represented in the action, and the Attorney General shall represent the defendants in each action. If it is determined in the action that the amount claimed by the taxpayer was erroneously or illegally collected from the taxpayer, the taxpayer shall be entitled to judgment against the defendant county tax official in said tax official's official capacity for the amount erroneously or illegally collected, without interest to the date of judgment. Court costs charged against the defendant in such an action and any interest payable on a judgment in favor of the taxpayer in such an action for a period before the judgment becomes final shall be paid by the commissioner as part of the expenses of administering this article. The principal amount of a final judgment in favor of the taxpayer in such an action, exclusive of court costs, shall be paid forthwith to the taxpayer by the defendant county tax official from the special escrow fund, and no appropriation or

further authorization shall be necessary to authorize and require the payment of a judgment from the special escrow fund.

(g)(1) Upon expiration of the period for filing a claim for refund of a protested payment without any claim being filed, upon expiration of the period for filing an action for refund of a protested payment without any action being filed, upon dismissal of such an action, or upon final judgment in such an action, whichever event occurs first, the collecting officer holding the protested amount in a special escrow fund shall retain from that portion of the amount which is not payable to the protesting taxpayer or shall pay into the county treasury, as provided in Code Section 48-6-73, the percentage of such portion which is allowed by Code Section 48-6-73 as compensation for such collecting officer's services in collecting the tax.

(2) The balance of the portion after the deduction provided in paragraph (1) of this subsection shall be distributed as provided in Code Section 48-6-74 with respect to revenues derived, for the year during which the amount was paid by the taxpayer, from the intangible recording tax imposed by this article. (Ga. L. 1956, p. 720, § 1; Ga. L. 1977, p. 635, § 7; Code 1933, § 91A-3216, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1990, p. 1843, § 4; Ga. L. 1992, p. 6, § 48; Ga. L. 1994, p. 1767, § 8; Ga. L. 2012, p. 318, § 9/HB 100.)

The 2012 amendment, effective January 1, 2013, added "or in the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50" at the end of the last sentence of paragraph (e)(1). See editor's note for applicability.

Editor's notes. — Ga. L. 2012, p. 318, § 16(b)/HB 100, not codified by the General Assembly, provides, in part, that: "Sections 1 through 14 of this Act shall become effective on January 1, 2013, provided that cases pending on January 1, 2013, shall continue to be governed by the law in effect on December 31, 2012, until the conclusion of the case."

ARTICLE 4

TAXATION OF FINANCIAL INSTITUTIONS

48-6-93. Local business license tax on depository financial institutions; tax rate based on Georgia gross receipts; return required; allocation of gross receipts; tax credited against state corporate income tax liability.

Law reviews. — For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U.L. Rev. 217 (2011).

48-6-95. Special state occupation tax on depository financial institutions; tax rate based on Georgia gross receipts; determining gross receipts; return required; annual report of commissioner; credits.

Law reviews. — For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U.L. Rev. 217 (2011).